Approved: May 22, 2007
Date

MINUTES OF THE SENATE WAYS AND MEANS COMMITTEE

The meeting was called to order by Chairman Dwayne Umbarger at 2:15 P.M. on March 28, 2007, in Room 123-S of the Capitol.

All members were present except:
Senator Jim Barone- excused
Senator Donald Betts- excused
Senator Steve Morris- excused
Senator Chris Steineger- excused

Committee staff present:
Jill Wolters, Senior Assistant, Revisor of Statutes
Theresa Kiernan, Senior Assistant Revisor of Statutes
Gordon Self, First Assistant Revisor of Statutes Office
J. G. Scott, Kansas Legislative Research Department
Audrey Dunkel, Kansas Legislative Research Department
Julian Efird, Kansas Legislative Research Department
Susan Kannarr, Kansas Legislative Research Department
Heather O'Hara, Kansas Legislative Research Department
Michael Steiner, Kansas Legislative Research Department
Melinda Gaul, Chief of Staff, Senate Ways & Means
Mary Shaw, Committee Assistant

Conferees appearing before the committee:
Dr. Marcia Nielsen, Executive Director, Kansas Health Policy Authority
Senator John Vratil
Tom Stacy, University of Kansas Law School
John White, Retired District Court Judge
Debra Billingsly, State Board of Pharmacy
Nancy Zogleman, Pfizer
Julie Hein, Kansas Pharmacy Coalition
Senator Mike Petersen

Others attending:
See attached list.

Chairman Umbarger turned the Committee's attention to discussion of:

HB 2556--Postsecondary technical education authority

A letter was distributed that had been received by Richard Hoffman, Kaw Area Technical School, regarding **HB 2556** (Attachment 1).

Senator Teichman explained a balloon amendment that addressed committee concerns from the previous day and all of the parties involved and that had been notified of the balloon (Attachment 2). Staff distributed copies of correspondence with George Fahnestock, Chairman of the Kansas Technical College and Vocational School Commission regarding **HB 2556** (Attachment 3) and (Attachment 4). Senator Teichman moved, with a second by Senator Emler, to adopt the balloon amendment and the Revisor incorporate technical corrections. Motion carried on a voice vote.

Senator Teichman moved, with a second by Senator Kelly, to recommend **Senate Substitute for HB 2556** favorable for passage. Motion carried on a roll call vote.

Chairman Umbarger opened the public hearing on:

MINUTES OF THE Senate Ways and Means Committee at 2:15 P.M. on March 28, 2007, in Room 123-S of the Capitol.

SB 387--Kansas health policy authority, health insurance premium assistance programs

Staff briefed the Committee on the bill.

The Chairman welcomed Dr. Marcia Nielsen, Executive Director, Kansas Health Policy Authority, who testified in support of **SB 387** (Attachment 5). Dr. Nielsen addressed the 2007 Short Term and Long Term Consensus Package, Health for All Kansas Steering Committee and the Kansas Health Policy Authority Board. She explained Item No. 6 of her written testimony regarding Premium Assistance for Low Income Families - needed legislative language which is **SB 387**. Dr. Nielsen detailed the information in that the bill would create a phased-in premium assistance program in order to help low income uninsured families in Kansas to purchase private health insurance, either through their employer or through state-procured insurance plans.

There being no further conferees to appear before the committee, the Chairman closed the public hearing on **SB 387**.

Senator Teichman moved, with a second by Senator V. Schmidt, to recommend **SB 387** favorable for passage. Motion carried on a roll call vote.

Chairman Umbarger opened the public hearing on:

SB 391--Creating the Kansas criminal code recodification commission; appropriating $200,000 to fund the commission's work

Staff briefed the committee on the bill.

The Chairman welcomed Senator John Vratil as a proponent on **SB 391**. Senator Vratil explained that **SB 391** would allow the recodification of the criminal statutes which has not been done since 1969. He noted that if the money is appropriated, this could be done in three years' time at approximately $150,000 - $200,000 each year. In closing, Senator Vratil mentioned that this is an effort to simplify and coordinate the statutes. (No written testimony was submitted.)

Chairman Umbarger recognized Tom Stacy, Professor at the University of Kansas Law School, who chaired the Criminal code Recodification Subcommittee of the 3R's Committee, testified in favor of **SB 391** (Attachment 6). Mr. Stacy explained that a comprehensive recodification of the criminal statutes is a valuable and needed project which the Legislature cannot accomplish itself. Since it has been over thirty years since the codes have been revised, fundamental changes such as sentencing guidelines and a new death penalty have been made.

The Chairman acknowledged John White, Retired District Court Judge, who testified in support of **SB 391** (Attachment 7). Judge White mentioned that he has been working as Reporter for the recodification subcommittee of the 3R's Committee since August of 2006. He explained that the American law institute model penal code is a model criminal code that has been used by over two-thirds of the states as a pattern for developing their criminal codes. The Kansas criminal code is partially patterned on the model penal code. In closing, Judge White mentioned that this is a model to follow in a comprehensive recodification that also provides a framework for future legislation. The Judge also requested amending **SB 391** to be effective on publication in the Kansas Register.

Written testimony in support of **SB 391** was submitted by Roger Werholtz, Secretary, Kansas Department of Corrections (Attachment 8).

There being no further conferees to appear before the committee, the Chairman closed the public hearing on **SB 391**.

MINUTES OF THE Senate Ways and Means Committee at 2:15 P.M. on March 28, 2007, in Room 123-S of the Capitol.

Senator Teichman moved, with a second by Senator Kelly, to amend **SB 391** to be effective on publication in the Kansas Register. Motion carried on a voice vote.

Senator Schodorf moved, with a second by Senator Emler, to recommend **Senate Substitute for SB 391** favorable for passage. Motion carried on a roll call vote.

Chairman Umbarger opened the public hearing on:

HB 2531--Pharmacy act amendments concerning durable medical equipment and wholesale drug regulation

Staff briefed the committee on the bill.

The Chairman welcomed the following conferees:

Debra Billingsly, Executive Director, Kansas State Board of Pharmacy, who testified in support of **HB 2531** (Attachment 9). Ms. Billingsly explained that the 2006 Legislature mandated that the Board of Pharmacy conduct a task force to study the issue of counterfeit drugs, pedigrees for prescription drugs, penalty aspects for violation of pedigree requirements and registration requirements of wholesale distributors. She noted that the Board determined that there was a need for changes in the prescription drug wholesale registration process in that increased requirements for registration were critical to make sure that entities met the minimum standard. In closing, Ms. Billingsly mentioned that **HB 2531** is a beginning point to combat counterfeit drugs.

Nancy Zogleman, Pfizer, Inc., testified in favor of **HB 2531** (Attachment 10). Ms. Zogleman reported that counterfeit pharmaceuticals are a growing problem. She noted that a report released by the Center for Medicines in the Public Interest, in the United States, projects counterfeit drug sales to reach US$ 75 billion in 2010, a 92 percent increase from 2005. Ms. Zogleman suggested amending **HB 2531** to add the definition of Normal Distribution Channel.

Julie Hein, on behalf of the Kansas Pharmacy Coalition, testified as a proponent of **HB 2531** (Attachment 11). Ms. Hein mentioned that the bill will increase the requirements and provide additional safeguards for those choosing to be wholesaler of prescription drugs in Kansas. They support the conclusion of the Board of Pharmacy on that issue. Ms. Hein requested clarifying amendments and worked with the Board of Pharmacy and the amendments are included in the current version of the bill.

Written testimony was submitted by Senator Mike Petersen (Attachment 12).

There being no further conferees to appear before the committee, the Chairman closed the public hearing on **HB 2531**.

Senator V. Schmidt moved, with a second by Senator Kelly, to adopt two balloon amendments (Attachment 13) and (Attachment 14) and including authorized technical cleanup of **HB 2531** by the Revisor. Motion carried on a voice vote.

Senator Kelly moved, with a second by Senator Teichman, to recommend **Senate Substitute for HB 2531** favorable for passage. Motion carried on a roll call vote.

Senator Vicki Schmidt expressed her thanks to Chairman Umbarger and Revisor Jill Wolters for all their work regarding **HB 2531**.

Subcommittee report on:

Kansas Public Employees Retirement System Issues, March 28, 2007 Report (Attachment 15)

MINUTES OF THE Senate Ways and Means Committee at 2:15 P.M. on March 28, 2007, in Room 123-S of the Capitol.

Senator David Wysong, Member, Subcommittee on Kansas Public Employees Retirement System Issues, reported that the original report was presented to the Senate Ways and Means Committee on March 12, 2007, and the report was adopted and three bills listed below were recommended favorably:

SB 180 – Clarify the income tax exemption for certain lump-sum payments at retirement from KPERS and certain amounts received as payments from the state board of regents retirement plan

SB 335--Investment and divestment standards and procedures for the board of trustees of the Kansas Public Employees Retirement System with regard to the KPERS fund related to direct or indirect holdings of companies with certain operations in Sudan

SB 371--Purchase of participating service credit under KPERS for service as law enforcement personnel in support of a mission administered by the united nations

All three bills were passed by the Senate. Due to the House not taking any action, the Subcommittee recommends that the provisions of each bill listed in the subcommittee report be amended into:

HB 2457--KPERS, investment standards and divestment procedures, service credit purchases, exemption from taxation of benefits and disability benefits:

Senator Wysong moved, with a second by Senator Teichman, to amend the provisions of **SB 180, SB 335** and **SB 371** into **HB 2457** and recommend **Senate Substitute for HB 2457** favorable for passage. Motion carried on a roll call vote.

Senator Vicki Schmidt expressed her thanks to Chairman Umbarger and Revisor Jill Wolters and all the Staff for all their hard work.

Chairman Umbarger expressed his thanks and appreciation both to the Committee and all the Staff for their hard work during the 2007 Legislative Session. He noted that the Committee will meet again for the Omnibus Session beginning on Wednesday, April 18, 2007, at 8:30 a.m.

The meeting adjourned at 4:00 p.m. The next meeting is scheduled for April 18, 2007, the Omnibus Session.

SENATE WAYS AND MEANS COMMITTEE
GUEST LIST
Date March 28, 2007

Name	Representing
Tim Madden	KDOC
Ed Klumpp	
JPatrick Brazil	Re-codification Comm
John White	Recodification SB391
Tom Stacy	Recodification SB391
Chantel Marquardt	Recodification
Jennifer Crow	SRS
Lake Thompson	KHPA
Mike Shields	KHI News
Marci Nielsen	KHPA
Richard Samaya	Kenny & Assoc
John Peterson	Capitol Strategies -
Sheila Frahm	KACCT
Scott Rowland	Pinegar, Smith & Assoc
Karrie Ann Lower	KAHP
Debra Billingsley	KBOP
Kerri Spielman	KAIA
[illegible] Ron	KACCT
Shanne Wikle	Kansas Action for Children
Corrie Edwards	KNCC
Cara Dreier	KAMU
Bernie Koch	Wichita Metro Chamber
MARK P. HATTIG	VIA CHRISTI HEALTH SYSTEM

SENATE WAYS AND MEANS COMMITTEE
GUEST LIST
Date March 28, 2007

Name	Representing
Walker Harris	Sen. Jim Barone
Mary Ellen Conlee	Wichita Area Technical College
Carolyn Smith	VCHS
Jared Loos	United Healthcare

KATS
Kaw Area Technical School
"YOUR WORKFORCE DEVELOPMENT SPECIALIST"
5724 SW Huntoon Street * Topeka, Kansas 66604-2199 * 785-273-7140 * Fax: 785-273-7080 * www.kats.tec.ks.us

Chair Umbarger and Senate Ways and Means Committee Members

RE: HB2556

As you continue your deliberations on HB 2556 I wanted to make clear the position of Kaw Area Technical School, (KATS).

It is the opinion of the General Advisory Council of the KATS board of control, seventeen superintendents representing seventeen school districts, that a separate authority dedicated solely to issues of technical education is needed to insure the proper focus is maintained on these important matters.

Further, the KBOR already has a Technical Education Advisory committee for Perkins issues, the Kansas Advisory committee on Career and Tech Ed.

HB 2556 addresses the need to coordinate the development of a seamless system for the delivery of technical education between the secondary-school level and postsecondary-school level. KATS General Advisory Council is concerned that if the Authority is downgraded to an advisory role that this focus on the development of a seamless system will be lost.

The technical education authority authorized by HB 2556 will enable KBOR to have the staff needed to focus on all issues of technical education and all the implications of decisions that need to be made and limit the unintended consequences.

HB 2556 will provide assistance to meet the needs of business and industry clients and help Kansas remain competitive by developing strategies and programs focused on leveraging the dollars provided to educate employees of Kansas companies. (i.e., KATS would receive incentives for offering training programs to help companies such as Hill's and Innovia meet the training needs of their employees as well as assist Payless employees in being retrained when Payless closes it's distribution center).

In conclusion, as director of Kaw Area Technical School, I believe I speak for all technical schools when I say passing HB 2556 as is will put into place the support needed to give technical institutions governed by USD's the assistance required to make decisions that will meet the needs of as many of your constituents as possible. Specifically, a Technical Authority, created to focus on the issues facing all of technical education, will greatly assist Kaw Area Technical School in deciding the best course of action in choosing the path that will help the majority of its students.

Sincerely,

Richard B. Hoffman
Director

Senate Ways and Means
3-28-07
Attachment 1

[As Amended by House Committee of the Whole]

As Amended by House Committee

Session of 2007

HOUSE BILL No. 2556

By Committee on Federal and State Affairs

2-28

AN ACT concerning technical education; establishing the postsecondary technical education authority; relating to the powers and duties thereof.

Be it enacted by the Legislature of the State of Kansas:

~~Section 1. (a) There is hereby established the postsecondary technical education authority. The authority shall be composed of seven members appointed by the governor. Except as provided in subsection (b) for the first members appointed to the authority, each member of the authority shall hold office for a term of four years, and until a successor is appointed and qualified. Terms of members shall expire on June 30.~~

~~(b) (1) Two members of the authority shall be members of the state board of regents. Three members shall represent Kansas business and industry. Two members shall represent the general public. When making appointments of the representatives of Kansas business and industry and the general public, the governor shall give consideration to persons who are recognized for their knowledge or expertise and are representative of current and emerging technical career clusters of the state. No more than two members of the authority shall be representative of any one specific technical career cluster. Of the members appointed to represent Kansas business and industry and the general public, there shall be appointed at least one member from each congressional district. Redistricting of congressional districts occurring subsequent to a member's appointment shall not disqualify any member of the authority from service for the remainder of the member's term of office.~~

Section 1. (a) There is hereby established the postsecondary technical education authority. The authority shall be composed of ~~seven [nine]~~ members appointed as follows:

~~(1) Two members shall be appointed by the state board of regents, who shall be members of the state board of regents or their designees; and~~

~~(2) five members shall be appointed by the governor. Three~~

~~members appointed by the governor shall be representatives of Kansas business and industry and two members shall be representatives of the general public.~~ [(1) Four members shall be appointed by the state board of regents. Of the members appointed by the state board of regents: Two shall be members of the state board of regents, or the designee thereof; one shall be a representative of the community colleges which provides technical education, or the designee thereof; and one shall be a representative of the technical colleges in the state, or the designee thereof; ~~and~~

~~[(2) one member shall be appointed by the governor, who shall be representative of the general public;~~

~~[(3) one member shall be appointed by the president of the senate, who shall be representative of Kansas business and industry;~~

~~[(4) one member shall be appointed by the minority leader of the senate, who shall be representative of Kansas business and industry;~~

~~[(5) one member shall be appointed by the speaker of the house of representatives, who shall be representative of the general public; and~~

~~[(6) one member shall be appointed by the minority leader of the house of representatives, who shall be representative of Kansas business and industry.]~~

(b) When making appointments of the representatives of Kansas business and industry and the general public, consideration shall be given to persons who are recognized for their knowledge or expertise and are representative of current and emerging technical career clusters of the state. No more than two members of the authority shall be representative of any one specific technical career cluster. Of the members appointed to represent Kansas business and industry and the general public, there shall be appointed at least one member from each congressional district. Redistricting of congressional districts occurring subsequent to a member's appointment shall not disqualify any member of the authority from service for the remainder of the member's term of office.

~~(2)~~ (c) No more than ~~four~~ [five] members of the authority shall be members of the same political party.

~~(3)~~ ~~(d) The first members of the authority shall be appointed by the governor on or before July 1, 2007. Of such members, two shall have a term of office of four years, two shall have a term of office of three years, two shall have a term of office of two years and one shall have a term of office of one year.~~

(2) five members shall be appointed by the governor. Of which three shall represent Kansas business and industry and two shall represent the general public; and

(3) the commissioner of education, the secretary of commerce and the secretary of labor who shall serve as ex officio members of the authority.

The state board of regents shall determine the technical career clusters of the state.

voting

~~(4)~~ ~~(e)~~ [(d)] Any vacancy in the membership of the authority occurring prior to the expiration of a term shall be filled by appointment in the same manner as provided for original appointment of the member.

~~(e)~~ ~~(f)~~ [(e)] The members of the authority shall meet and organize annually by electing one member as chairperson, except that the governor shall designate the first chairperson of the authority from among the first members appointed.

~~(d)~~ ~~(g)~~ [(f)] The authority may meet at any time and at any place within the state on the call of the chairperson. A quorum of the authority shall be ~~four~~ five members. All actions of the authority shall be by motion adopted by a majority of those voting members present when there is a quorum.

~~(e)~~ ~~(h)~~ [(g)] Members of the authority attending meetings of the authority, or attending a subcommittee meeting thereof authorized by the authority, shall be paid compensation, subsistence allowances, mileage and other expenses as provided in K.S.A. 75-3212, and amendments thereto, for members of the legislature.

Sec. 2. (a) The postsecondary technical education authority shall:

(1) Have delegated authority from the board of regents to coordinate state-wide planning for postsecondary technical education, new postsecondary technical education programs and contract training. Such planning shall be conducted in coordination with federal agencies, the state board of education and other state agencies and Kansas business and industry;

(2) recommend for adoption by the state board of regents rules and regulations for the supervision of postsecondary technical education;

(3) review existing and proposed postsecondary technical educational programs and program locations and make recommendations to the state board of regents for approval or disapproval of such programs for state funding purposes;

(4) review requests of state funding for postsecondary technical education and make recommendations to the state board of regents for amounts of state funding and the distribution thereof;

(5) develop benchmarks and accountability indicators of programs to be utilized in the awarding of state funding and make recommendations relating thereto to the state board of regents;

(6) develop and advocate annually a policy agenda for postsecondary technical education;

(7) conduct continuous studies of ways to maximize the utilization of resources available for postsecondary technical education and make recommendations for improvement in the use of such resources to the state board of regents;

(8) conduct studies to develop strategies and programs for meeting

needs of business and industry and make recommendations relating thereto to the state board of regents;

(9) make reports on the performance of its functions and duties together with any proposals and recommendations it may formulate with respect thereto to the state board of regents and the legislature; and

(10) coordinate the development of a seamless system for the delivery of technical education between the secondary-school level and the postsecondary-school level.

(b) Recommendations adopted by the authority pursuant to subsection (a) shall be considered and acted on by the state board of regents at regular meetings of the state board. Non-adoption of recommendations of the authority shall require a majority vote of all members of the state board of regents.

~~(c) The provisions of this subsection shall be subject to the provisions of appropriation acts. The postsecondary technical educational authority and the chief executive officer of the state board of regents shall appoint an executive director of the authority. The executive director shall serve at the pleasure of the authority and the chief executive officer. The executive director shall not be a member of the authority.~~

Sec. 3. Subject to the provisions of appropriation acts, the state board of regents shall provide staff, facilities and other assistance as may be requested by the postsecondary technical education authority.

[Sec. 4. The provisions of sections 1, 2 and 3, and amendments thereto, shall expire on June 30, ~~2010~~.]

Sec. ~~4.~~ **[5.]** (a) On or before July 1, 2008, the governing bodies of the northeast Kansas technical college, Kansas City area technical school, Kaw area technical school, Salina area technical school and southwest Kansas technical school shall submit **to the state board of regents** a plan to merge or affiliate with a postsecondary educational institution or become an accredited technical college with an independent governing board.

(b) As used in this section:

(1) "Postsecondary educational institution" means a technical college, community college, municipal university or a state educational institution.

(2) "Technical college", "community college", "municipal university" and "state educational institution" have the meanings ascribed thereto by K.S.A. 74-3201b, and amendments thereto.

Sec. ~~5.~~ **[6.]** This act shall take effect and be in force from and after its publication in the Kansas register.

(c)(1) The state board of regents and the postsecondary technical education authority shall appoint, subject to the approval of the Kansas association of community college trustees and the Kansas association of technical schools and colleges, or the successor organizations thereof, a vice president of workforce development who shall serve as the executive director of the postsecondary technical education authority. The vice president for workforce development shall be in the unclassified service under the Kansas civil service act. Such person shall not be a member of the authority and shall serve at the pleasure of the state board of regents.

(2) The Kansas association of community college trustees and the Kansas association of technical schools and colleges, or the successor organizations thereof, shall adopt a procedure to approve or not approve the appointment of a person to the position of vice president of workforce development by the state board of regents and the postsecondary technical education authority pursuant to paragraph (1) of this subsection.

2014

2-4

From: Audrey Dunkel [mailto:AudreyD@klrd.state.ks.us]
Sent: Tue 3/27/2007 12:59 PM
To: George Fahnestock
Subject: HB 2556 in Senate Ways and Means

The Senate Ways and Means Committee will continue its discussion on HB 2556, the Tech Ed Authority Bill, tomorrow morning. There were several questions that they would like to have you respond to as they continue their deliberations. They are as follows:

1. The Committee would like your response to the House Amendments to HB 2556. (I have attached both the current version of HB 2556 and the Supplemental Note, which explains the amendments, for you to review.)

2. The Committee would like your response to the amendments proposed by Senator Teichman. (The amendment language is attached below.)

a. The Senator's amendment would add 3 ex-officio members to the Authority - the Secretary of Commerce, the Secretary of Labor, and the Commissioner of Education.

b. In addition, the Senator's amendment makes technical corrections to the bill to increase the number for a quorum from four to five - this reflects the increase in the number of members of the Authority from 7 to 9 made by the House amendments.

c. The final change in the Senator's amendment is to create a vice-president of workforce development in the Board of Regents, appointed by the Board of Regents, to serve as the executive director of the authority, serving at the pleasure of the Board of Regents.

The Committee will meet tomorrow morning. If you can have your response to me by 10:00 a.m. tomorrow (Wednesday, the 28th), I would appreciate it. Please do not hesitate to contact me if you have questions!

Audrey A. Dunkel, Senior Fiscal Analyst
Kansas Legislative Research Department
300 SW 10th - Room 545N
Topeka, KS 66612
Phone: (785) 296-3181
Fax: (785) 296-3824

C:\data\2007 Session\Bills\HB 2556\Questions.wpd

Senate Ways and Means
3-28-07
Attachment 3

From: "George Fahnestock" <georgef@fahnestockhvac.com>
To: "Audrey Dunkel" <AudreyD@klrd.state.ks.us>
Date: 3/27/2007 11:12 PM
Subject: RE: HB 2556 in Senate Ways and Means

Good evening Audrey,

I am sorry I was unable to be present at the discussions of HB 2556 today with the Senate Ways and Means Committee. I can assure you it was not because of my desire to insure that this most important initiative be given every consideration and most deliberate attention. It was something about a Wichita Children's Home board meeting, a YEK class presentation, and a Boys and Girls Club committee meeting!! I will attempt to respond to each of your questions in the order they were presented to me.

1. As I testified to the Senate Ways and Means Committee last Thursday, the Commission compromised and agreed to the amended HB 2556 as it came out of the House, which included increasing the number of members on the Authority, and related quorums, etc., as well as a sunset provision. The emphasis of the Authority to maintain a strong advocacy for outcomes based performance was to be a coordinating authority with the privilege of hiring/firing (appointing) an executive director in cooperation with and coordinated by the CEO of the Board of Regents. A very important measure to insure that the members of the newly formed Authority would have the necessary input into the selection of, and an adequate amount of responsive control over the intended consequences of such a coordinated effort.

2. I have no objections to the amendments as proposed by Senator Teichman regarding adding three ex-officio members from Commerce, Labor, and Education. As a matter of fact, I think these additions make good sense, as technical education, workforce development, and seamless articulation touch each of these departments, and they must be coordinated and each must be kept abreast of everything that is going on with the Authority. Once again, I have no problem with the technical corrections to the bill increasing the number of members for a quorum. And finally I have no problem with the creation of a Vice President of workforce development in the Board of Regents, to also serve as the Executive Director of the Authority. My concern is that if the Authority does not have the ability to advise and consent to the appointment of this position, along with the CEO of the Regents, the Authority may fall on "advisory capacity" ears, with little more than obligatory and perfunctory responsibilities, and lacking the very presence of demanding the best outcomes possible. I am not worried about Reggie Robinson, current CEO of the Board, making this initiative work, as I have the highest degree of confidence in his ability and desire to implement the strategies, benchmarks, and methodologies that the Commission has been searching for, and I think we have found, to make us a formidable competitor for retaining, growing, and recruiting business and industry in our state. What I am worried about is several years down the road, and Reggie is advising the President of the Us, if not the President himself, and having to recreate how we arrived at a "once again" status quo disconnected, unsatisfactory, under funded mess.

I believe the fundamental success of this bill rests on the Authority's ability to affect change, monitor outcomes, and provide solutions to our students, business and industry, and to the taxpayers of our state to provide more than reasonable returns on their investments, and in order to do that we need a strong group of passionate citizens who will put their stakes in the ground and find ways to make this work. They need to be able to be strong. Advise and consent is so fundamental.

Once again, thank you for all you do to make this system move in a meaningful direction, and my heartfelt thanks to the elected officials who deliberate everyday as to what is best for the citizens of our state. They are to be commended. I am most proud and privileged to be a part of the process of insuring that our Great State will be the best she can possibly be.

I will be available by cell all day tomorrow (Wednesday) and will look for any calls from a 785 area code.

Senate Ways and Means
3-28-07
Attachment 4

KHPA
Kansas Health Policy Authority
Coordinating health & health care for a thriving Kansas

MARCIA J. NIELSEN, PhD, MPH
Executive Director

ANDREW ALLISON, PhD
Deputy Director

SCOTT BRUNNER
Chief Financial Officer

Testimony on:

SB 387: Premium Assistance &
2007 Short Term and Long Term Consensus Package

presented to:

Senate Committee on Ways and Means

by:

Dr. Marcia Nielsen
Executive Director

Dr. Andrew Allison
Deputy Director and
Acting Medicaid Director

March 28, 2007

For additional information contact:

Luke Thompson
Kansas Health Policy Authority

Landon State Office Building
900 SW Jackson Street, Suite 900
Topeka, KS 66612
Phone: 785-296-3981
Fax: 785-296-4813

Senate Ways and Means
3-28-07
Attachment 5

Senate Committee on Ways and Means
March 28, 2007

Good morning, Chairman Umbarger and members of the Committee. I am Marcia Nielsen, Executive Director of the Kansas Health Policy Authority (KHPA). With me today is Andy Allison, Deputy Director and Acting Medicaid Director. I appreciate the opportunity to talk to you today about the premium assistance language proposed in Senate Bill 387. I'd also like to provide some background on and the results of the process for health reform the Health for All Kansans Steering Committee and the Kansas Health Policy Authority Board has participated in over the last couple of months.

2007 Short Term and Long Term Consensus Package

Health for All Kansans Steering Committee & Kansas Health Policy Authority Board

The Health for All Kansans Steering Committee began meeting in early February and included four legislators and several board members. Consensus was achieved on a short term legislative package for adoption this session as well as enabling legislation that directs the KHPA to develop health reform options for consideration by the 2008 legislature and implementation in 2009 and 2010. The full KHPA board voted to endorse both proposals. The plan and timeline for broad health reform will be developed *this year* with the input from a wide array of stakeholders through the Advisory Councils recently adopted by the KHPA Board. All health policy options that will be developed will include an independent economic analysis in order to help legislators understand (a) the costs of any proposals (to the state, to the federal government, employers, and individuals) and (b) who will gain access to health insurance as a result of the policy option. This is the kind of information that policymakers need and deserve before advancing health reform plans for the state – Kansas specific policy requires Kansas specific information and input.

Short term legislative package for action this year

1. Early detection and screening for newborns – *legislation already moving*

Expands screening for newborns from our current level of four tests to twenty-nine. This effort represents a true and meaningful step in the direction of early diagnosis and early intervention that will pay immeasurable benefits in future years.
FY 2008 SGF: $191,000; All Funds: $1,189,942

> Recent Action: The House and Senate budget conference committee reached an agreement on two health care related issues over the weekend. Committee members agreed to budget $8.0 million and 2.0 FTEs for expanded newborn screening in Kansas. These funds will allow all newborns in Kansas to receive screening for the 29 treatable conditions.

2. Medicaid outreach and enrollment expansion – *need appropriation*

Expands the marketing of programs available to the public in order to educate Kansans about the HealthWave program and about health and wellness by: (1) designing an online application and screening tool for potential beneficiaries, (2) developing and implementing a targeting marketing campaign and (3) employing additional outreach workers.

FY 2008 SGF: $336,247 (FY 2008) All Funds: $ 822,112 (FY 2008)

3. Consider Deficit Reduction Act (DRA) Flexibilities – *no legislation needed*

Supports the opportunities provided through the DRA to allow moving waiver services into the Medicaid state plan, designing benchmark benefit packages with more cost sharing, and exploring innovative reform models through Medicaid Transformation Grants.

> Recent Action: The Kansas Medicaid program has received a Medicaid Transformation grant for $910,000 which will combine predictive modeling with training by KU clinicians to assist case managers in coordinating preventative care for disabled Medicaid beneficiaries with the goal of improved health outcomes. We have also submitted a Long Term Care Partnership grant together with the Kansas Department of Insurance and the Department on Aging. Other DRA flexibilities will be explored in broader health reform as outlined the enabling legislation.

4. Promoting price and quality transparency – *needs appropriation*

Promotes transparency for Kansas consumers and purchasers through a two phased approach that collects data currently available in one convenient location (through KHPA and State libraries), and then adds health care pricing and quality data (as determined by the KHPA Data Consortium – comprised of providers, consumers, and purchasers). This kind of information will also help to reduce utilization of care that is not evidence-based or is of questionable quality, which will serve to reduce overall health care costs.
SGF: $425,682 (FY 2008) All Funds: $543,790 (FY 2008)

5. Increasing Health Information Technology/Health Information Exchange (HIT/HIE) – *need appropriation.*

Building on the work of the Health Care Cost Containment Commission (H4C) and the KHPA, the state will develop and establish an "Implementation Center for HIE" in Kansas through a public/private entity in order to have a single coordination point for Kansas HIE efforts. Adoption of HIT and HIE will help to improve patient safety, cut down on administrative costs, promote evidence-based health care and help to reduce overall health care costs.
SGF: $750,000 (FY 2008) All Funds: $1 M (FY 2008)

6. Premium Assistance for Low Income Families – *need legislative language: SB 387*

Creates a phased-in premium assistance program in order to help low income uninsured families in Kansas to purchase private health insurance, either through their employer or through state procured health insurance plans. Research suggests that better health outcomes are associated with all family members receiving access to care or health insurance through the same plan, and thus, have a "medical home". Although children in Kansas are eligible for Medicaid and/or the State Children's Health Insurance Program up to 200 percent of the federal poverty level (FPL), Kansas currently has one of the lowest rates of Medicaid eligibility in the nation for poor parents (less than 38 percent of the FPL). In 2006, 37% of the Federal Poverty Level (FPL) was $3,626 for a single person; $4,884 for a family of two; $6,142 for a family of three; and $8,658 for a family of four.

> **Details on Premium Assistance:** Premium assistance in Kansas will be phased in over four years, with a "legislative trigger" after the first two years to evaluate the program and ensure that funding is available. Premium Assistance programs can be implemented to two ways:

- Competitively bid state-procured health plans: For low income uninsured families, Medicaid (state and federal share) would pay for premiums for state-procured private health insurance to be offered to low income children and their parents. Because children eligible for Medicaid are required by federal law to receive certain services, the private insurance plans would be supplemented by "wrapping around" private health insurance coverage with fee-for-service Medicaid.
- Employer-sponsored insurance (ESI) buy-in: For low income uninsured parents who have access to employer sponsored private health insurance, Medicaid would pay the employee share of the health insurance premium for families and then "wrap around" children's coverage with fee for service Medicaid.

Reduces the number of uninsured Kansans

- Phases-in health insurance coverage to families who are uninsured with Medicaid-eligible children (i.e. those at approximately 37% of the federal poverty level)
- Creates a "medical home" for families because premium assistance brings parents and children into the same private health insurance plan
- Protects health care benefits currently offered to children on Medicaid

Expands private health insurance coverage

- Expands coverage solely through private health plans, promoting competition in the health insurance marketplace
- Increases health plan choices available to low-income families, similar to the State Employee Health Benefits Plans (includes HSA)
- Puts Medicaid benefits for parents on a par with privately-insured families
- Prepares the way for further reforms to improve markets and expand health insurance coverage
- Can be used to incentivize health promotion and disease prevention within private plans
- Will be "phased in" to dovetail with additional health insurance market reforms, such as a health insurance connector

Leverages federal dollars toward broader health reform

- Draws in federal matching funds and takes advantage of Deficit Reduction Act Flexibilities – giving Kansas an opportunity to "catch up" with other states in terms of federal support for increasing access to health care
- Together with increased transparency of health care cost and quality as well as information technology, can create partnerships with the US Department of Health and Human Services

Cost and Coverage Premium Assistance Plan – preliminary estimates only

Phase-In	Year 1	Year 2	Year 3	Year 4	*FULL PHASE IN*
Percent of Federal Poverty Level (FPL)	Ramp up (Those under 37% FPL)	Under 50% FPL	50-74% FPL	75-99% FPL	*Total under 100% FPL*
Number of parents covered	N/A	8,500	7,000	8,500	*24,000*
Estimated administrative costs	$.5M	$1.5M	$2M	$2.25M	$2.25M
SGF: Premium costs		$11M	$9M	$11M	*$31M*
Federal Matching Funds		$16M	$14M	$16M	*$46M*
Total Costs		$27M	$23M	$27M	*$77M*

Long Term Health Insurance Reform: Enabling legislation for action this year

The KHPA supports enabling legislation this session to direct development of "Health for all Kansans" legislation for adoption in 2008 and implementation in 2009 and 2010. The Steering committee thus endorsed the Substitute for SB 309 proposal, which was authored by Senator Jim Barnett and was passed the Senate 40 to 0.

Guiding Principles for Health Reform in Kansas:

- Every Kansan should have access to patient-centered health care and public health services ensuring the right care, at the right place, and the right price.
- Health promotion, education, and disease prevention should be integrated directly into these services.
- The financing of health care and health promotion in Kansas should be equitable, seamless, and sustainable for consumers, providers, purchasers and government.
- Reforms to the health system in Kansas should be fiscally responsible, market based, and promote individual responsibility.
- Reforms to the health system in Kansas must protect the health care safety net..

Time frame agreed upon the Steering Committee:

- By March 19th 2007: Advise the KHPA Board, the Governor, and legislative leadership on a proposed legislative package that could be considered during the 2007 session.
- By March 19th 2007: Advise the KHPA Board, the Governor, and legislative leadership on proposed enabling legislation that would charge the KHPA with the development of health reform options that achieve access to care for all Kansans.
- March 20th, 2007: Share proposed legislative package and enabling language for consideration by the KHPA Board.

- April 1 through November, 2007: The KHPA will develop health reform options as outlined in the enabling legislation, in collaboration with the Advisory Councils. Economic impact analysis for these reform options will be provided by national experts with experience in state health reform. KHPA will update the Board, Governor, and legislative leadership on progress.
- By November 1, 2007: The KHPA staff will deliver the health reform options to the KHPA Board, Governor, legislative leadership (including the Oversight Committee) for their consideration. This package will include: 2 or 3 options; a feasible timeline; a cost analysis; an estimate on administrative costs (contract and staff expenses); and an economic analysis on the impact of these proposals to populations served.
- 2008 Legislative Session. The Governor and Legislature will consider health reform options for adoption by 2008 legislature.
- 2009 and 2010. KHPA to implement health reforms – continue to collaborate and refine policies with the Advisory Councils and Steering Committee.

KHPA
Kansas Health Policy Authority
Coordinating health & health care for a thriving Kansas

MARCIA J. NIELSEN, PhD
Executive Director

ANDREW ALLISON, PhD
Deputy Director

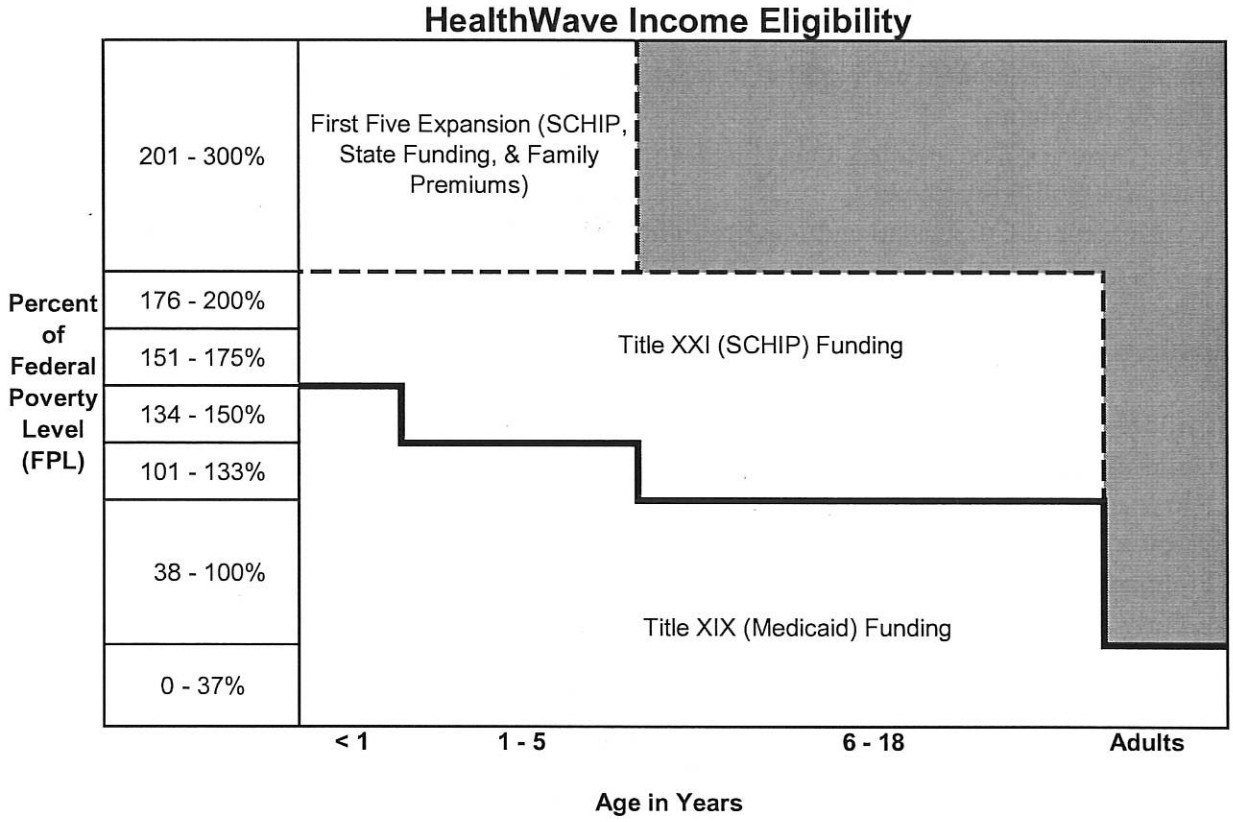
SCOTT BRUNNER
Chief Financial Officer

Medicaid and SCHIP (HealthWave Program) Fact Sheet

What is the HealthWave program?

In 2001, the ***Medicaid*** managed care program was blended with the ***State Children's Health Insurance Program (SCHIP)*** into the HealthWave program to help ensure a seamless product. HealthWave enables families with children who are eligible for SCHIP and Medicaid to have the same health plan and health provider for all family members. The HealthWave program also serves Medicaid-eligible adults and children in the Temporary Assistance to Families (TAF) and Poverty Level Eligible (PLE) programs.

What are the HealthWave Income Eligibility Thresholds?



Agency Website: www.khpa.ks.gov
Address: Rm. 900-N, Landon Building, 900 SW Jackson Street, Topeka, KS 66612-1220

Medicaid and HealthWave:
Phone: 785-296-3981
Fax: 785-296-4813

State Employee Health Benefits and Plan Purchasing:
Phone: 785-296-6280
Fax: 785-368-7180

State Self Insurance Fund:
Phone: 785-296-2364
Fax: 785-296-6995

W[illegible]e the 2006 Federal Poverty Level Guidelines for Kansans?

Family Size	Percent of Poverty 100%	120%	133%	135%	150%	175%	185%	200%	250%
1	$9,800	$11,760	$13,034	$13,230	$14,700	$17,150	$18,130	$19,600	$24,500
2	$13,200	$15,840	$17,556	$17,820	$19,800	$23,100	$24,420	$26,400	$33,000
3	$16,600	$19,920	$22,078	$22,410	$24,900	$29,050	$30,710	$33,200	$41,500
4	$20,000	$24,000	$26,600	$27,000	$30,000	$35,000	$37,000	$40,000	$50,000
5	$23,400	$28,080	$31,122	$31,590	$35,100	$40,950	$43,290	$46,800	$58,500

Medicaid

What is Medicaid (Title XIX)?

Medicaid, also known as Title XIX, is a federal-state partnership program that provides health and long-term care services to people with low-incomes. These services include preventive, primary and acute health services for individuals, children and families. It also provides certain long-term care services, like nursing homes, for the elderly or people with disabilities.

Who is eligible for Medicaid in Kansas?

All persons applying for Medicaid are required to meet general, non-financial requirements, which include:

- Kansas Residency
- U.S. Citizen or Documented, Qualified Immigrant Status (except for coverage of emergency services under the SOBRA program)
- Verification of Citizenship and Identity (with a few exceptions)
- Use of other health insurance coverage before using Medicaid

What populations receive benefits through Medicaid?

- Children age 6 and older below 100% FPL ($16,600 a year for a family of 3)
- Children between ages 1 and 6 below 133% FPL ($22,078 a year for a family of 3)
- Families with minor children below the limit for Temporary Assistance for Families case assistance (approx. 37% FPL)
- Pregnant women and infants (ages 0-1) at or below 150% FPL
- Elderly and disabled SSI beneficiaries with income at or below 75% FPL ($7,500 a year for an individual)
- Employed persons with disabilities under 300% FPL
- Low-income seniors who receive Medicare, referred to as Qualified Medicare Beneficiaries (QMBs), Specified Low Income Medicare Beneficiaries (SLMBSs), and Qualifying Individuals (QIs)

What mandatory benefits are included in Medicaid?

Mandatory benefits that are provided through Medicaid include physician services; laboratory and x-ray services; inpatient hospital services; outpatient hospital services; early and periodic-screening, diagnostic, and treatment (EPSDT) services for individuals under 21; family planning and supplies; Federally-qualified health center (FQHC) services; rural health clinic services; nurse midwife services; and certified pediatric and family

nu actitioner services. Mandatory long-term care benefits are institutional services and nursing facili (NF) services for individuals 21 or over.

What optional services are included in Kansas Medicaid?

The state offers the following optional services through the Medicaid program:

- Alcohol and Drug Abuse Treatment
- Attendent Care for Independent Living
- Audiological services
- Behavior Management
- Community Mental Health Center & Psychological Services
- Dental services (Limited to certain consumers)
- Durable medical equipment
- Medical Supplies, Orthotics, and Prosthetics
- Early Childhood Intervention
- Health Clinics
- Home or community-based services
- Hospice services
- Inpatient Pscyhiatric services
- Intermediate care facility services
- Local Education Agencies
- Local Health Department services
- Nursing services
- Physical therapy, occupational therapy and services for individuals with speech, hearing and language disorders
- Prescribed drugs
- Podiatric services covered for EPSDT beneficiaries only
- Respiratory care for ventilator-dependent individuals
- Services for special disorders
- Targeted case management for assistive technology
- Vision services

How many Kansans are currently served by Kansas Medicaid?

The Kansas Medicaid program serves 250,336 individuals monthly, as of February 2007. This is a sharp decrease compared to this time last year, because federal citizenship and identity requirements have caused a Medicaid caseload reduction. On a monthly basis, the Medicaid program costs $170,454,530, which is approximately $681 per person enrolled in the program. However, this number varies depending on the service utilization and age, among other factors.

How is Medicaid financed in Kansas?

The federal government provides approximately 60 percent of the cost of Medicaid services. In other words, for every Medicaid dollar spent in Kansas, about 60 cents comes from the federal government; the State provides the remaining 40 cents. Medicaid is an open-ended entitlement for states.

When does a beneficiary's eligibility expire?

All beneficiaries must have eligibility redetermined at least once a year. Changes in income, resources and other circumstances during the year will impact the eligibility status for most adults. For children, Kansas applies a policy called continuous eligibility which allows children to be covered regardless of changes in income for up to one year.

How much does a family pay in premiums for Medicaid?

The graph below outlines that a family must pay a premium of $20 or $30, depending on their income and the federal poverty level.

Percent of Federal Poverty Level (FPL)	176-200%		$30 Family	$30 Family	$30 Family	
	151-175%		$20 Family	$20 Family	$20 Family	
	134-150%			No Premium	No Premium	
	101-133%				No Premium	
	38-100%					
	0-37%					
Age in Years		Pregnant Women	Under 1	1 to 5	6 to 19	Adults

State Children's Health Insurance Program (SCHIP)

What is the State Children's Health Insurance Program (SCHIP-Title XXI)?

SCHIP, also known as Title XXI, was implemented in Kansas in 1999. SCHIP provides health care coverage for low-income children in families with incomes up to 200% of the federal poverty level who are not Medicaid-eligible. It is a federal-state partnership program.

Who is eligible for SCHIP in Kansas?

Kansas provides free or low-cost health insurance coverage to children in this program who:

- Are under the age of nineteen;
- Do not qualify for Medicaid;
- Have family incomes under the 200% of the FPL; and
- Are not covered by state employee health insurance or other private health insurance.

Eligibility is continuous for twelve months and re-established annually. The family must meet all eligibility criteria and have paid any applicable premiums from the prior year to be re-enrolled for a new twelve-month period.

How is SCHIP financed?

Nearly all health care services purchased by Medicaid and HealthWave are financed through a combination of state funds and federal matching funds. Under SCHIP, the federal government provides approximately 72 percent of the cost up to a maximum allotment, and the State provides the remaining 28 percent and any excess spent above the federal allotment.

How many children are enrolled in SCHIP?

As of March 2007, 34,414 children were enrolled in SCHIP. The average cost per child per month is $140.56. However, this varies depending on the number of children enrolled each month, as well as variations in the children's ages, service utilization and county of residence. In FY 2006, 56,000 Kansans received services through the SCHIP program at a cost of $62.4 million.

HealthWave Program Eligibility

How can a person apply for Medicaid or SCHIP?

An application form can be found at schools, places of worship, medical providers, www.kansashealthwave.org, or may be mailed to you by calling 1-800-792-4884. The form is then mailed in along with supporting

documentation such as wage information and citizenship and identity documentation to the Kansas Family Medical Clearinghouse, which is responsible for processing and eligibility determination for both Medicaid and SCHIP.

What are the citizenship and identity documentation requirements?

If a person applies for Medicaid, they must provide proof of U.S. citizenship and identity, as outlined in the Deficit Reduction Act of 2005. A U.S. Passport, Certificate of Naturalization or Certificate of Citizenship will verify both citizenship and identity. If a person does not have any of those documents, they must provide two forms of documentation, one for citizenship and one for identity. Citizenship documents include birth certificate or birth record, adoption records showing place of birth or military record. Identity documents include driver's license, federal, state or local id, military id, Native American Tribal document. A school id, school records, medical records or licensed or registered daycare documents will verify the identity of a child under 16 years of age. If you need help with your application, call 800.792.4884.

How can a person contact the HealthWave (Medicaid or SCHIP) program?

Mail:
P.O. Box 3599, Topeka, KS, 66601

Phone:
Toll Free: 1-800-792-4884
Topeka Area residents 368-1515
TTY: 1-800-792-4292

Fax:
Toll Free: 1-800-498-1255
Topeka Area residents 431-7194

5-12

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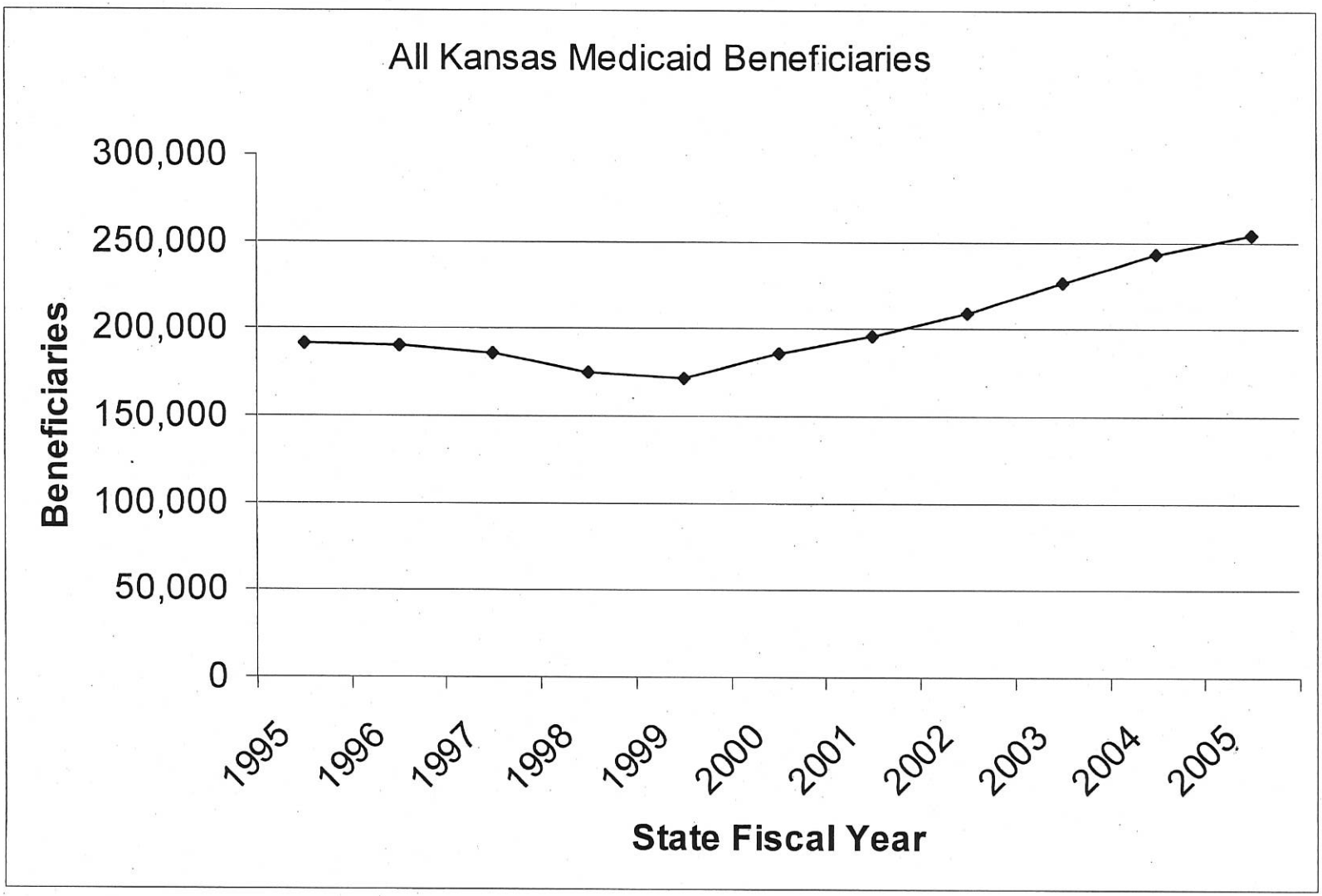
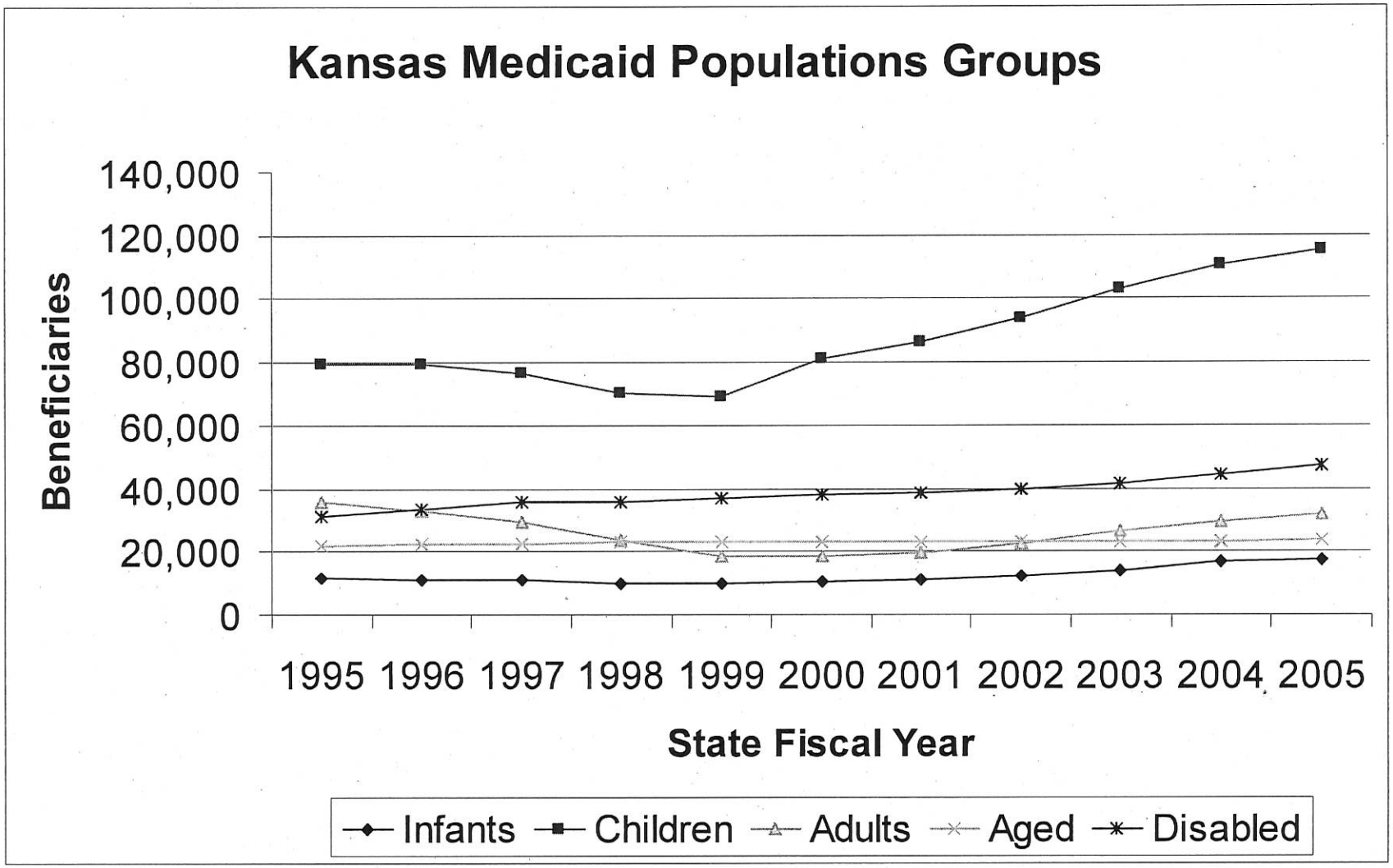
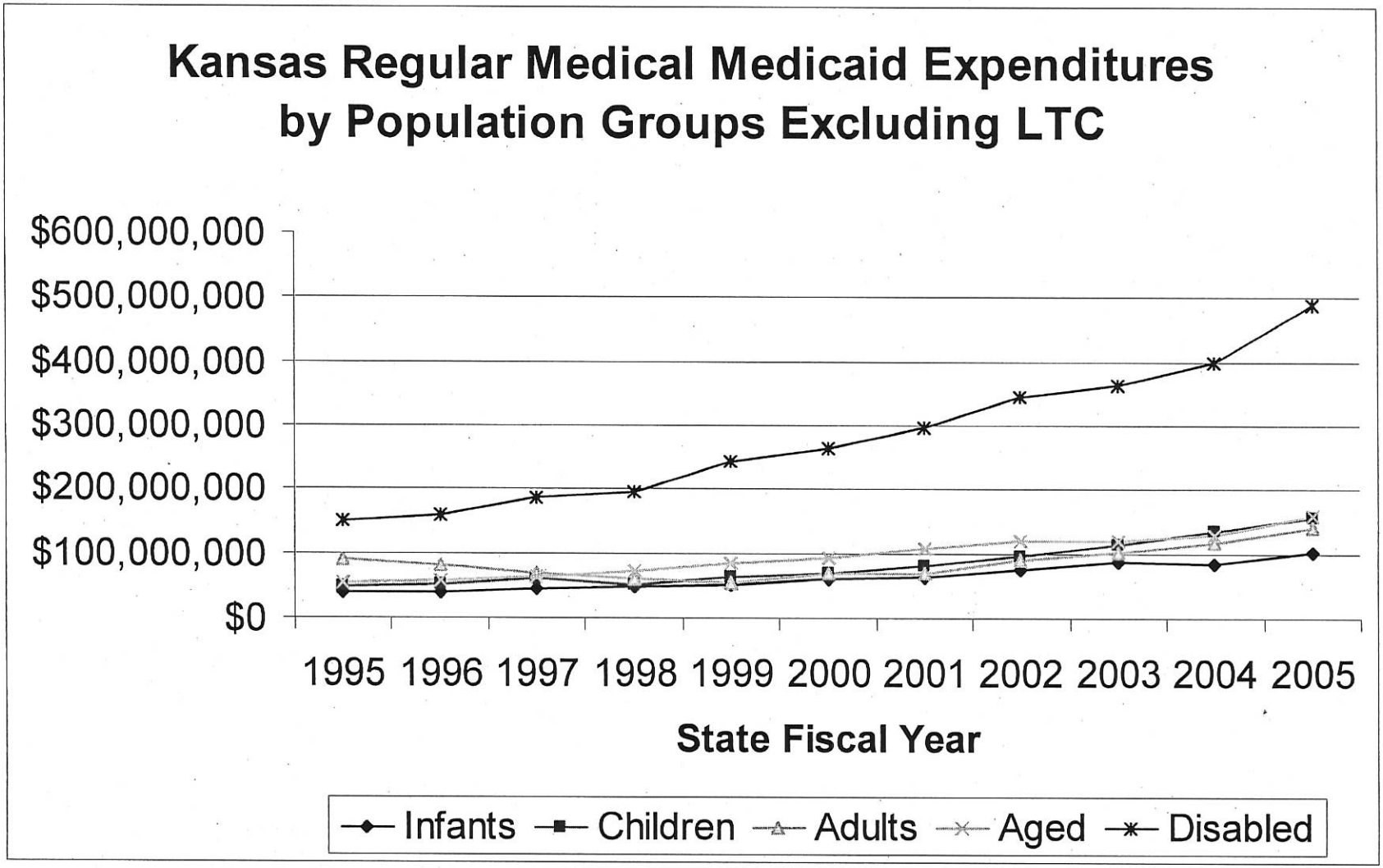
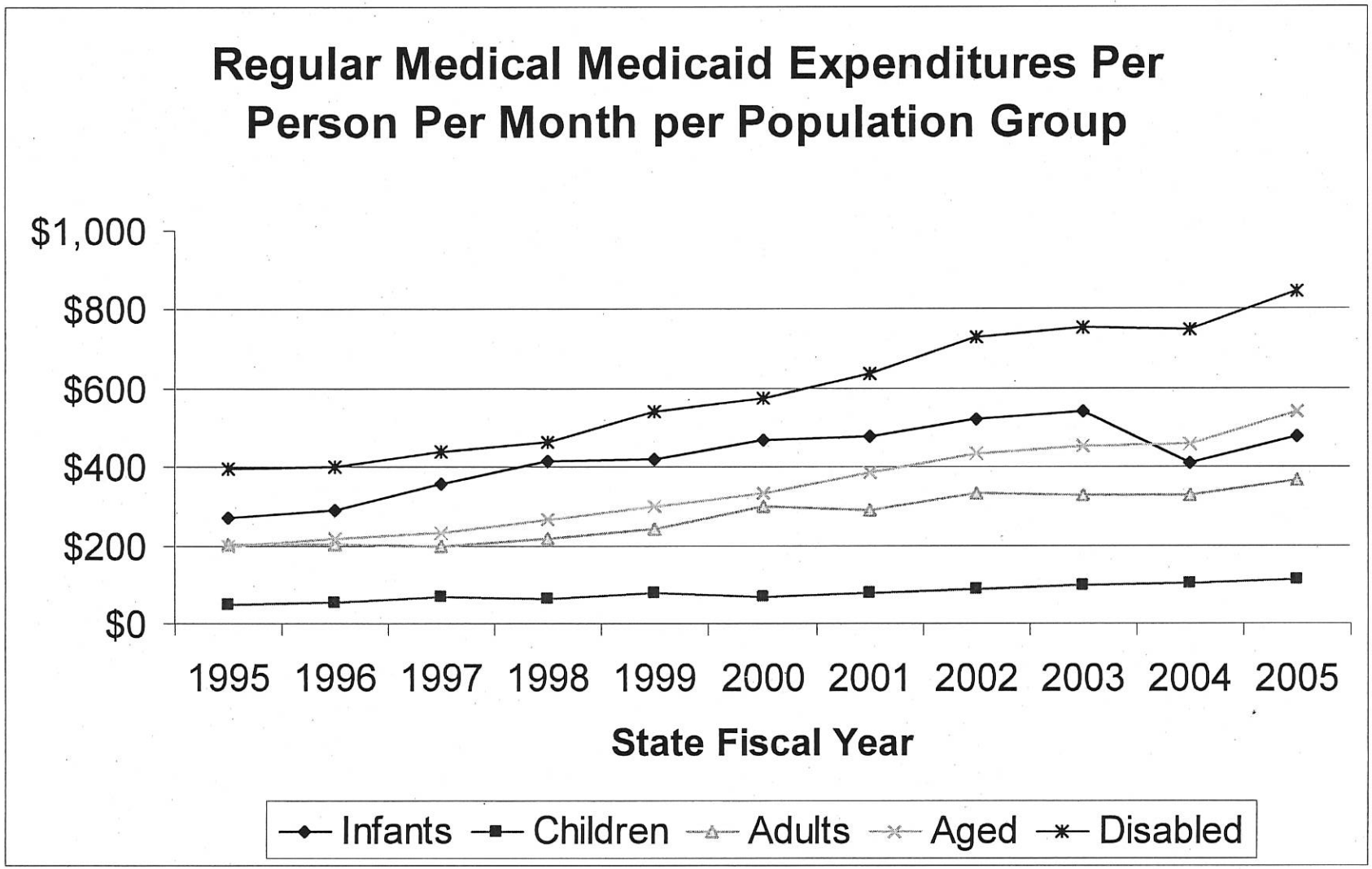
Medicaid and SCHIP Eligibility Historical Trends

Marcia J. Nielsen, PhD, MPH
Andrew Allison, PhD

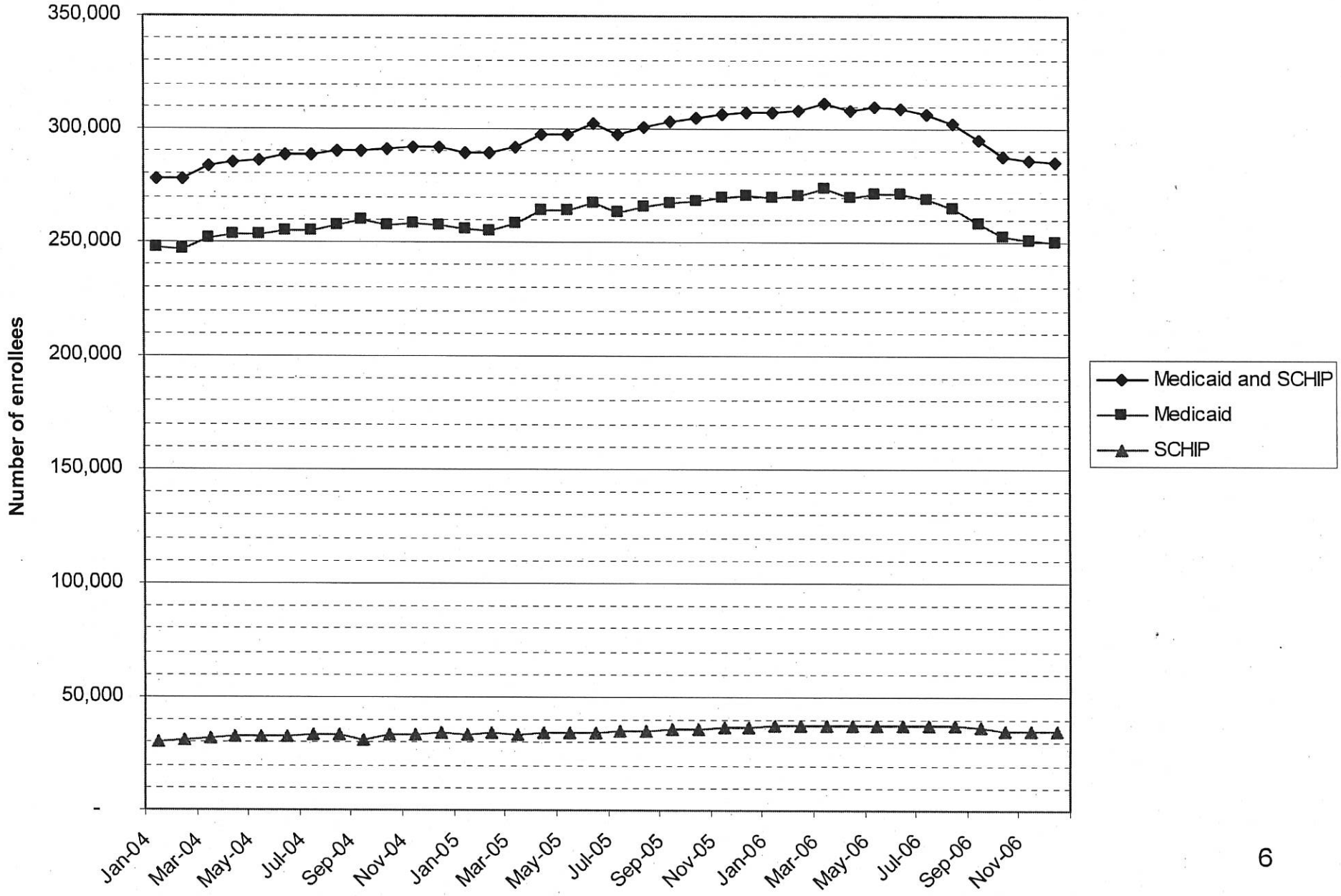

All Kansas Medicaid Beneficiaries
Beneficiaries
300,000
250,000
200,000
150,000
100,000
50,000
0
1995
1996
1997
1998
1999
2000
2001
2002
2003
2004
2005
State Fiscal Year


Kansas Medicaid Populations Groups
Beneficiaries
140,000
120,000
100,000
80,000
60,000
40,000
20,000
0
1995 1996 1997 1998 1999 2000 2001 2002 2003 2004 2005
State Fiscal Year
Infants
Children
Adults
Aged
Disabled

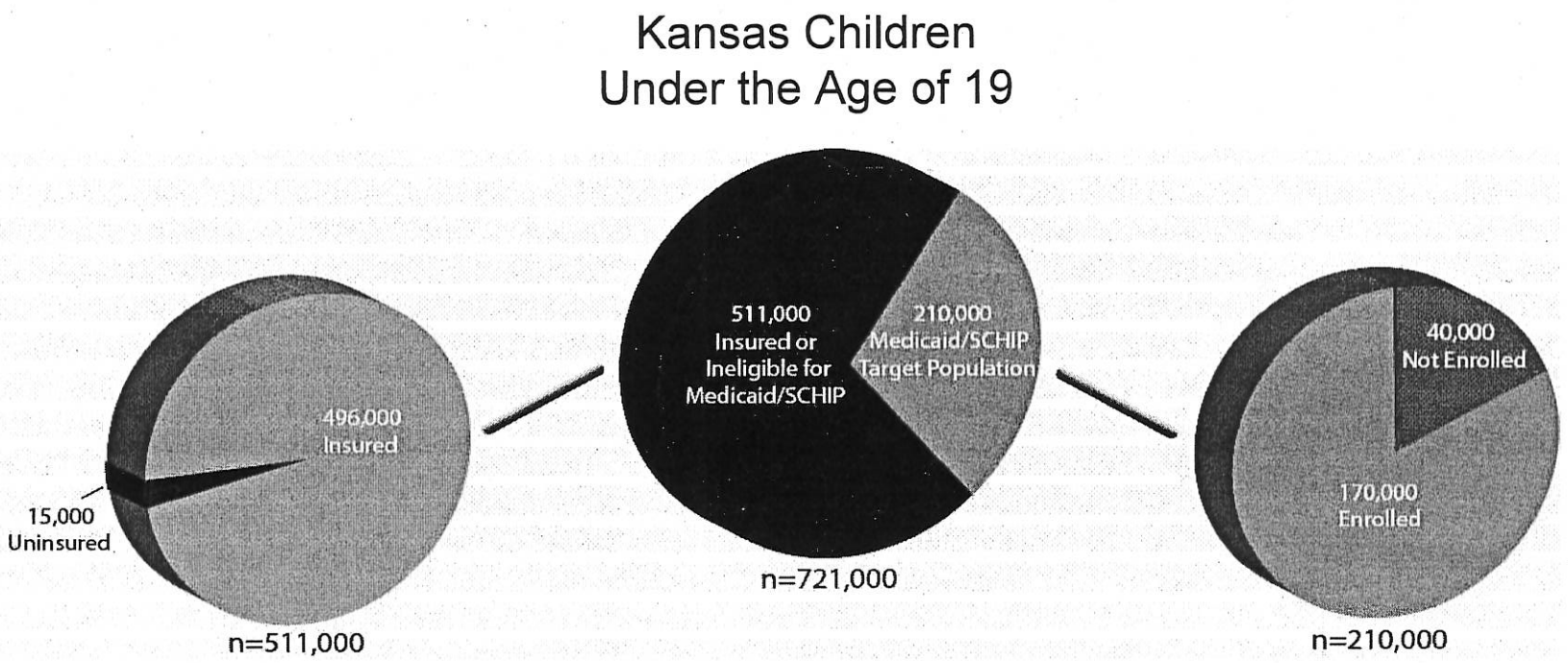

Kansas Regular Medical Medicaid Expenditures
by Population Groups Excluding LTC
$600,000,000
$500,000,000
$400,000,000
$300,000,000
$200,000,000
$100,000,000
$0
1995 1996 1997 1998 1999 2000 2001 2002 2003 2004 2005
State Fiscal Year
Infants
Children
Adults
Aged
Disabled


Regular Medical Medicaid Expenditures Per Person Per Month per Population Group
$1,000
$800
$600
$400
$200
$0
1995 1996 1997 1998 1999 2000 2001 2002 2003 2004 2005
State Fiscal Year
Infants
Children
Adults
Aged
Disabled

Enrollment in Medicaid and SCHIP: FY 2004-2007



Health Insurance Status of Kansas Children



Insured or Ineligible for Medicaid/SCHIP

Medicaid/SCHIP Target Population

- Kansas Medicaid/SCHIP programs insure 81 percent of target population

S.B. 391, Recodification of Criminal Statutes
Testimony of Tom Stacy, University of Kansas School of Law
Before Senate Ways and Means Committee
March 28, 2007

Thank you for the opportunity to testify today. I am Tom Stacy, professor at the KU Law School. I have been teaching and writing about the substantive criminal law for more than a decade, and have chaired the Criminal Code Recodification Subcommittee of the 3Rs Committee since the Subcommittee's inception in the late Fall of 2004.

The Subcommittee's membership and support team is broadly representative of the stakeholders in the Kansas Criminal Code. It includes prosecutors, defense attorneys, Senators Haley and Schmidt, Judge Crystal Marquardt of the Kansas Court of Appeals, District Judge Richard Smith of Linn County, and Ed Klumpp, retired Chief of the Topeka Police Department. We have reached out to the Kansas Judicial Council (KJC) and secured the additional participation of two members of the KJC Criminal Justice Advisory Committee. Judge David Knudson, a senior judge on the Court of Appeals, and now Judge White, a former District Judge, have served as our Reporter. Judge White now has tabbed Judge Patrick Brazil, senior Court of Appeals judge, as his assistant. We also had the assistance of eight students who took a recodification class I taught at KU School of Law in the Fall of 2005 as well as a couple of my research assistants.

With limited time and funds, the Subcommittee has produced a substantial work product. In late 2004, we voted unanimously to work on a comprehensive recodification which aims to make the criminal code more coherent, simpler and workable as a whole. In 2005, the Subcommittee met almost every month, often for an entire day. We adopted a statement of goals and outlined a process. We prepared and discussed lengthy memos concerning almost every major section of the code. We formulated tentative recommendations for changes. Initial drafts of several parts of the Code were produced by Judge Knudson and by students in my recodification class. We discussed these drafts and suggested changes. Judges White and Brazil have now produced near final drafts of some portions, which we have discussed.

The momentum of these considerable efforts unfortunately has been interrupted by a lack of funding. In early 2005, our progress was stalled due to uncertainty over funding for a Reporter. Judge Knudson, who was retained in March of 05, ceased work in late 2005 because our limited funds had dried up. Now the additional work led by Judges White and Brazil might cease altogether due to a lack of continued authority and funding. Our Subcommittee members are busy professionals who have generously volunteered large amounts of their time. It would be a great shame if we were to let go to waste the work of these persons, as well as that of Judges Knudson, White, and Brazil and of my law students.

As the Legislature already has recognized, comprehensive recodification is a valuable and needed project, which the Legislature cannot accomplish itself. Our code has not been comprehensively revised in over thirty years. Since then fundamental changes such

as sentencing guidelines and a new death penalty have been made. Each year the Legislature has added new offenses to the code, which often do not mesh with the Code's general culpability provisions and/or create serious issues concerning these offenses' relationship to other overlapping offenses. I applaud this Committee for considering giving us adequate time and funds to complete our work as a stand alone Committee operating under the auspices of the Kansas Judicial Council. The Subcommittee members who have been working on this project for more than two years and now Judges White and Brazil have developed an excellent working familiarity with our existing code and its various problems. It would be difficult, time-consuming, and expensive to replicate this expertise at a later date. With the time and funds contemplated by this Bill, we think that we can produce for your consideration a simpler and more coherent framework for another 35 years.

3-28-07

Senators,

My name is John White. I am a retired district judge. I served 23 years as a trial judge and chief judge of the 31st Judicial District in southeast Kansas. Since August of last year I have been acting as Reporter for the recodification subcommittee of the 3R's Committee. During these few months I have had the pleasure of working with members of the recodification subcommittee, some who are here today in support of Senate Bill 391.

I appreciate the opportunity to come before you to speak in support of Senate Bill 391.

The commission created by this bill will re-codify the code by doing those things listed in paragraph (b)(1) through (b)(5). Most of the language is fairly straightforward and self-explanatory.

Points I would like to mention—

(1) for those of you who may not know, the American law institute model penal code is, as it suggests, a model criminal code that has been used by over two-thirds of the states as a pattern for developing their criminal codes. It was first published in the 1960's. The Kansas criminal code is partially patterned on the model penal code. In the work we have done thus far we have paid particular attention to this model code. By doing so we accomplish a dual purpose. We have a model to follow in a comprehensive recodification that also provides a framework for future legislation.

(2) Proportionality in sentencing is a concern, especially regarding crimes involving sentences based on the drug grid. Some of you may know that in 2003 the Kansas Sentencing Commission contracted with the Vera Justice Institute to perform an analysis of the proportionality in sentencing under the Kansas Sentencing Guidelines. The Vera Report establishes the need for review of Kansas sentencing practices and the effect of those practices on prison populations.

(3) Regarding similarity of or overlapping statutes I would simply use the assault and battery statutes as an example. Our committee has tentatively approved combining more than ten statutes into five.

We think it is important that membership of the commission remains nearly the same as that of the recodification subcommittee. As Prof. Stacy has mentioned the work of the committee stalled in early 2006 due to a lack of funding. When I joined the committee there had been nearly 8 months of no meetings or work being done. When the committee resumed its work a few new members were appointed to replace former members. The effect was that much time and effort was required for the new members and Reporter to become familiar with the work that had been done.

Senate Ways and Means
3-28-07
Attachment 7

New members added are two members from the judicial council criminal law advisory committee, a member from corrections, and a member from the sentencing commission. Again, we are aware of the concern that many legislators, judges, and others have about our sentencing laws and practices and their effect on prison populations.

Paragraphs (e) and (f) provide for reimbursement of member's expenses, and the authority to hire such persons or firms as are necessary to complete the commission's work.

The commission's life is for three years. A final report is due in January 2010 with interim reports in February 2008 and 2009.

The commission funding is to be administered under the Judicial Council. The funding request for the first year is $200,000.

KANSAS
DEPARTMENT OF CORRECTIONS

Kathleen Sebelius, Governor
Roger Werholtz, Secretary

www.dc.state.ks.us

Testimony on SB 391
to
The Senate Ways and Means Committee

By Roger Werholtz
Secretary
Kansas Department of Corrections

March 28, 2007

The Department of Corrections supports SB 391 creating the Kansas Criminal Code Recodification Committee. The Recodification Committee would continue the work undertaken under the auspices of the Kansas Criminal Justice Recodification, Rehabilitation and Restoration Project. A review of the criminal code resulting in recommendations to the Legislature regarding modifications to the code serves a substantial interest to the criminal justice system of the State. A comprehensive study of the criminal code would aid the Legislature in identifying conflicting provisions of the code which would aid the Legislature in avoiding or correcting situations where the code provides conflicting penalties for the same criminal conduct. Additionally, review of the proportionality of Kansas sentences both in respect to other Kansas sentences as well as other states would aid the state in fulfilling one of its primary governmental functions, the establishment and administration of its criminal justice system.

The review and analysis of the state's criminal code is a monumental task. The work towards that goal under the Recodification, Rehabilitation and Restoration Committee should be continued pursuant to this bill.

The Department urges favorable consideration of this Bill.

DEPARTMENT OF CORRECTIONS
900 S.W. Jackson Street; Topeka, KS 66612-1284 • (785) 296-3317 • Fax: (785) 296-0014

KANSAS

BOARD OF PHARMACY
DEBRA L. BILLINGSLEY, EXECUTIVE DIRECTOR

KATHLEEN SEBELIUS, GOVERNOR

Testimony re: HB 2531
Senate Ways and Means
Presented by Debra L. Billingsley
March 28, 2007

Chairman Umbarger and Members of the Committee:

My name is Debra Billingsley and I am the Executive Director of the Kansas State Board of Pharmacy. The Board of Pharmacy has the responsibility for safeguarding the state's drug supply and regulating those involved in the distribution of medications.

In 2006 the legislature mandated that the Board of Pharmacy conduct a task force to study the issue of counterfeit drugs, pedigrees for prescription drugs, penalty aspects for violation of pedigree requirements, and registration requirements of wholesale distributors. The Board met on numerous occasions and the meetings were facilitated by an associate of the National Association of Boards of Pharmacy. There were at least twenty different entities represented at the meetings including the Board of Pharmacy, the Kansas Legislature, Kansas Pharmacy Association, animal health distributors, manufacturers, mail order pharmacy, distributors, community pharmacy, chain pharmacy and hospital pharmacy.

After an extensive review of the issues the Board determined that there was a need for changes in the prescription drug wholesale registration process. First, they determined that increased requirements for registration were critical to make sure that entities met the minimum standards. This was a noncontroversial item and everyone agreed that the Board's registration and accreditation standards needed to be expanded. Everyone agreed that the Board needed to provide a more in-depth application process by establishing standards requiring surety bonds; registration and periodic inspections; certification of a designated representative; designation of a registered agent; storage of drugs and devices; handling, transportation, and shipment of all drugs and devices; security; examination of drugs and devices and treatment of those found to be unacceptable as defined by the Board; due diligence regarding wholesale distribution; and creation and maintenance of records, including transaction records; and procedures for operation. Therefore, it was determined that the first step in combating counterfeit drugs was to set high standards for registration of all distributors shipping into Kansas. The task force agreed that there

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Attachment 9

should be increased penalties against those entities that violated any provision of the Pharmacy Act.

The Board identified that the current prescription drug wholesale registration included a group that should not be defined as a prescription drug wholesale distributor. Therefore, they defined this group as durable medical equipment distributors that sell directly to the patient or consumer. This bill exempts this group from the definition of wholesale distributor and would not require as stringent of a review. That is because we were targeting those groups who have the capability to ship counterfeit drugs into the State.

The Board of Pharmacy currently registers 768 prescription drug distributors. The Board determined that the first step in combating counterfeiting would be to separate the durable medical equipment dealers out of the wholesale distributors so that we can identify with specificity who is actually shipping prescription drugs into the State. This bill will permit the Board to do that and then to provide stringent requirements on those who are actually shipping drugs that are known to be counterfeited.

The Board of Pharmacy supports HB 2531 as a beginning point to combat counterfeit drugs and would appreciate the Committee's support.

HB 2531 – Licensing of Wholesale Distributors of Drugs

Hearing before the Senate Ways and Means Committee
Wednesday, March 28, 2007

Testimony by Nancy Zogleman
Pfizer, Inc.

The Problem Defined

What is a Counterfeit?

Pfizer defines a counterfeit pharmaceutical product as any non-authentic Pfizer tablet, capsule and/or packaging that appears the same as an authentic Pfizer product. A counterfeit product may or may not contain the same active pharmaceutical ingredient (API) as the authentic product.

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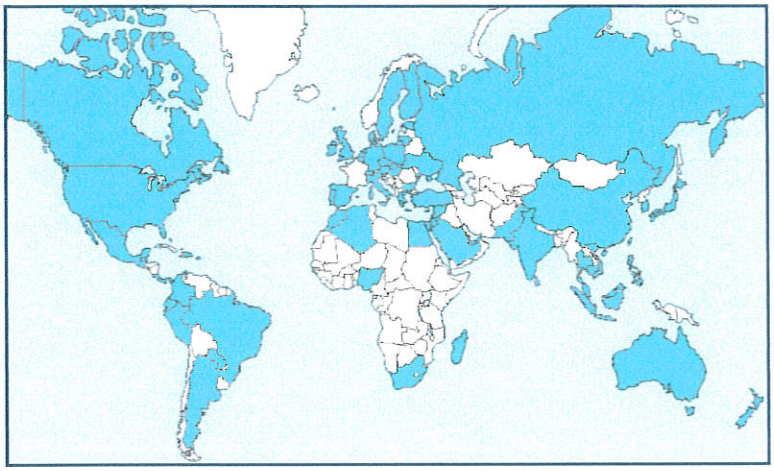
Counterfeit Pharmaceuticals: Global Problem



3

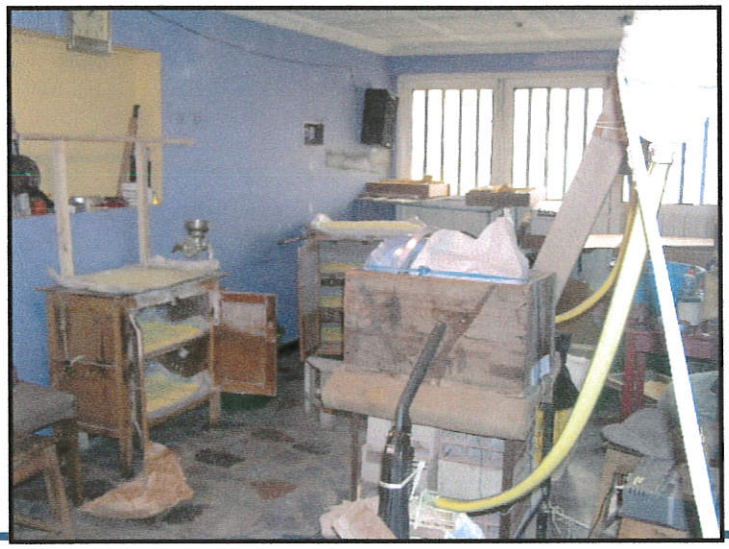
A Growing Problem

"Trade in counterfeits is extremely lucrative, thus making it more attractive to criminal networks. A report released by the Centre for Medicines in the Public Interest, in the United States, projects counterfeit drug sales to reach US$ 75 billion in 2010, a 92 % increase from 2005."

WHO Counterfeit medicines: the silent epidemic press release, February 2006

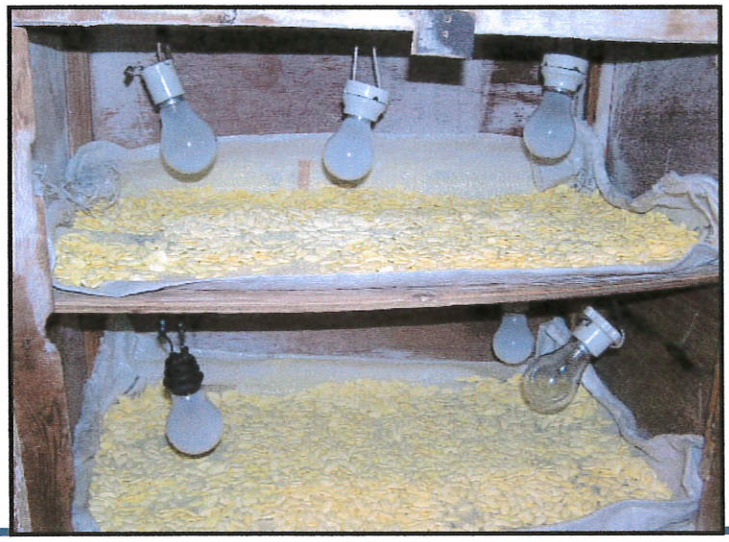
4

Counterfeit Lab in Ponstan, Colombia

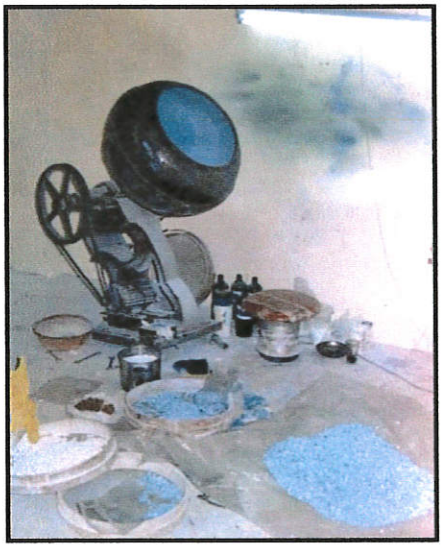


Tableting Machine in Latin America

Drying Oven In Latin American



Counterfeit Viagra in Egypt



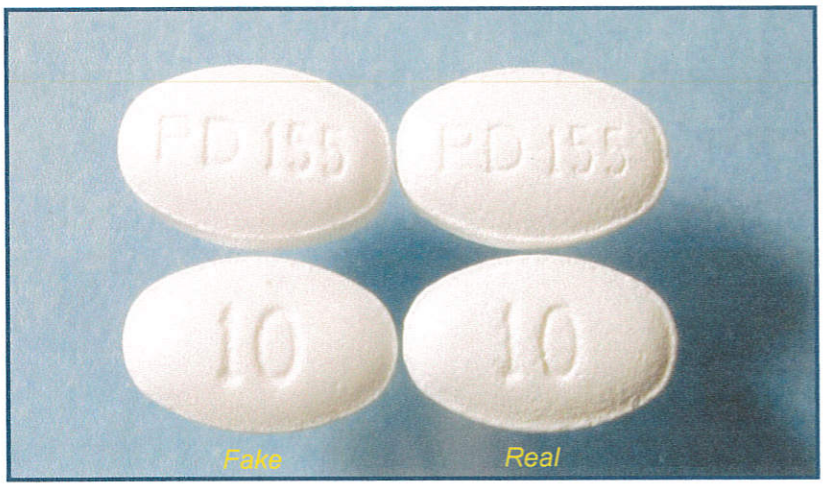
"What happened to us?"

One Case Study:

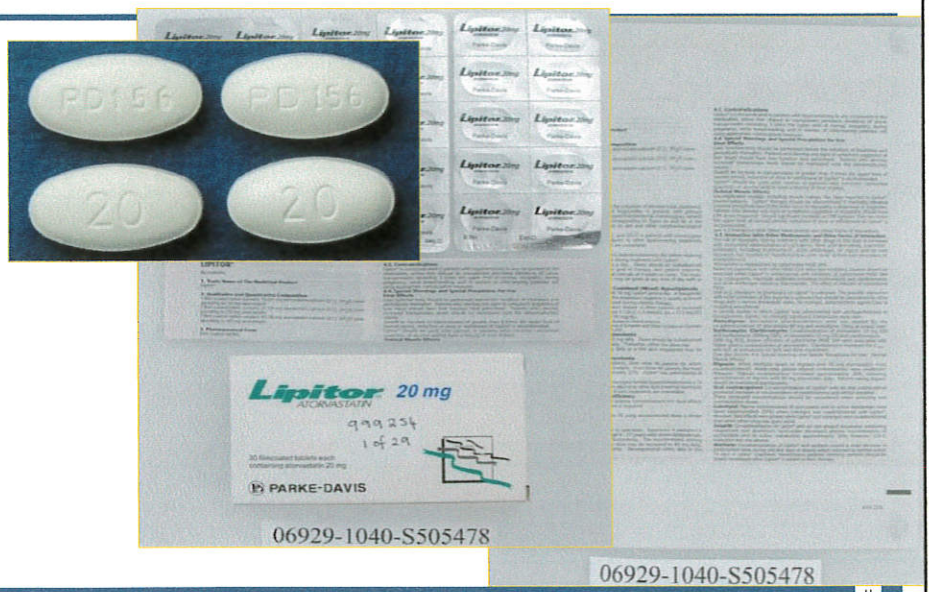
COUNTERFEIT LIPITOR® IN U.S. SUPPLYCHAIN

In 2003, Pfizer assisted federal law enforcement in the investigation of five U.S. firms involved in the distribution of counterfeit Lipitor tablets. The most significant of those investigations concerned counterfeit Lipitor tablets repackaged by a company in Nebraska, and distributed primarily by another company in Missouri.

Lipitor (lowers high cholesterol)



Suspect Lipitor Looked Convincing



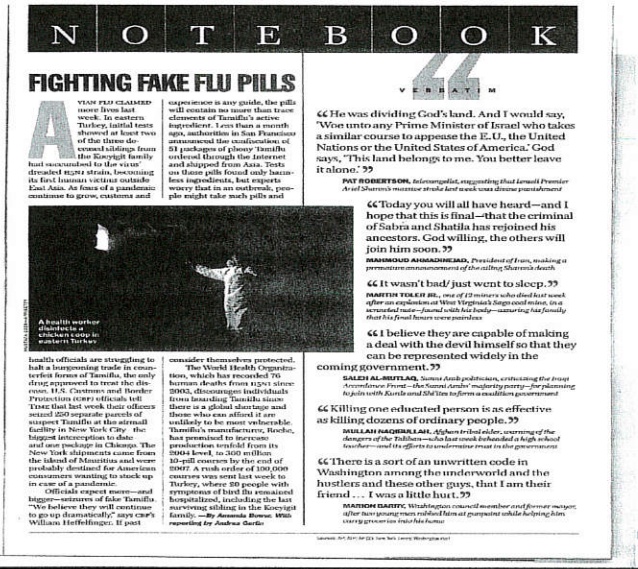
11

"What happened to us?"

- Lipitor is the most prescribed pharmaceutical product for the reduction of cholesterol in the world.
- During 2003, for example, 68,958,000 prescriptions for Lipitor were written in the U.S. alone.
- To put this case into perspective, more than 600,000 U.S. residents -- after visiting their local pharmacy, or placing an order by phone, mail or internet --may have received a thirty day supply of Lipitor that contained counterfeit tablets.
- We know of 160,000… . .
- FDA recalled more than 18,000,000 counterfeit and repackaged "Lipitor" tablets.
- Scarier still is the fact that this happened in the Kansas City market with one of the persons indicted being from Kansas

12

We are not alone…This is an article from Time Magazine last winter.



NOTEBOOK

FIGHTING FAKE FLU PILLS

AVIAN FLU CLAIMED more lives last week. In eastern Turkey, initial tests showed at least two of the three deceased siblings from the Kocyigit family had succumbed to the virus' dreaded H5N1 strain, becoming its first human victims outside East Asia. As fears of a pandemic continue to grow, customs and health officials are struggling to halt a burgeoning trade in counterfeit forms of Tamiflu, the only drug approved to treat the disease. U.S. Customs and Border Protection (CBP) officials tell TIME that last week their officers seized 220 separate parcels of suspect Tamiflu at the airmail facility in New York City the biggest interception to date and one package in Chicago. The New York shipments came from the island of Mauritius and were probably destined for American consumers wanting to stock up in case of a pandemic.

Officials expect more—and bigger—seizures of fake Tamiflu. "We believe they will continue to go up dramatically," says CBP's William Heffelfinger. If past experience is any guide, the pills will contain no more than trace elements of Tamiflu's active ingredient. Less than a month ago, authorities in San Francisco announced the confiscation of 51 packages of phony Tamiflu ordered through the Internet and shipped from Asia. Tests on these pills found only harmless ingredients, but experts worry that in an outbreak, people might take such pills and consider themselves protected.

The World Health Organization, which has recorded 76 human deaths from H5N1 since 2003, discourages individuals from hoarding Tamiflu since there is a global shortage and those who can afford it are unlikely to be most vulnerable. Tamiflu's manufacturer, Roche, has promised to increase production tenfold from its 2004 level, to 300 million 10-pill courses by the end of 2007. A rush order of 100,000 courses was sent last week to Turkey, where 20 people with symptoms of bird flu remained hospitalized, including the last surviving sibling in the Kocyigit family. —*By Amanda Bower. With reporting by Andrea Gerlin*

A health worker disinfects a chicken coop in eastern Turkey

VERBATIM

"He was dividing God's land. And I would say, 'Woe unto any Prime Minister of Israel who takes a similar course to appease the E.U., the United Nations or the United States of America.' God says, 'This land belongs to me. You better leave it alone.'"
PAT ROBERTSON, *televangelist, suggesting that Israeli Premier Ariel Sharon's massive stroke last week was divine punishment*

"Today you will all have heard—and I hope that this is final—that the criminal of Sabra and Shatila has rejoined his ancestors. God willing, the others will join him soon."
MAHMOUD AHMADINEJAD, *President of Iran, making a premature announcement of the ailing Sharon's death*

"It wasn't bad/ just went to sleep."
MARTIN TOLER JR., *one of 13 miners who died last week after an explosion at West Virginia's Sago coal mine, in a scrawled note—found with his body—assuring his family that his final hours were painless*

"I believe they are capable of making a deal with the devil himself so that they can be represented widely in the coming government."
SALEH AL-MUTLAQ, *Sunni Arab politician, criticizing the Iraqi Accordance Front—the Sunni Arabs' majority party—for planning to join with Kurds and Shi'ites to form a coalition government*

"Killing one educated person is as effective as killing dozens of ordinary people."
MULLAH NAQIBULLAH, *Afghan tribal elder, warning of the dangers of the Taliban—who last week beheaded a high school teacher—and its efforts to undermine trust in the government*

"There is a sort of an unwritten code in Washington among the underworld and the hustlers and these other guys, that I am their friend . . . I was a little hurt."
MARION BARRY, *Washington council member and former mayor, after two young men robbed him at gunpoint while helping him carry groceries into his home*

13

Legislation – HB 2531

- Needless to say – this is a complicated topic
- Kansas Legislature looked at this issue extensively last session
- SB 51 passed last session which addressed the criminal activity and directed the Board of Pharmacy to study this issue and bring "recommendations for licensing and pedigree legislation to the legislature no later than January 15, 2007."
- Study Group made up of all interested parties – Wholesalers, Pharmacists, Manufacturers, Chain Drug Stores, Board members – assisted by staff from National Association of Boards of Pharmacies worked through the summer and fall.
- HB 2531 is the work product of that group

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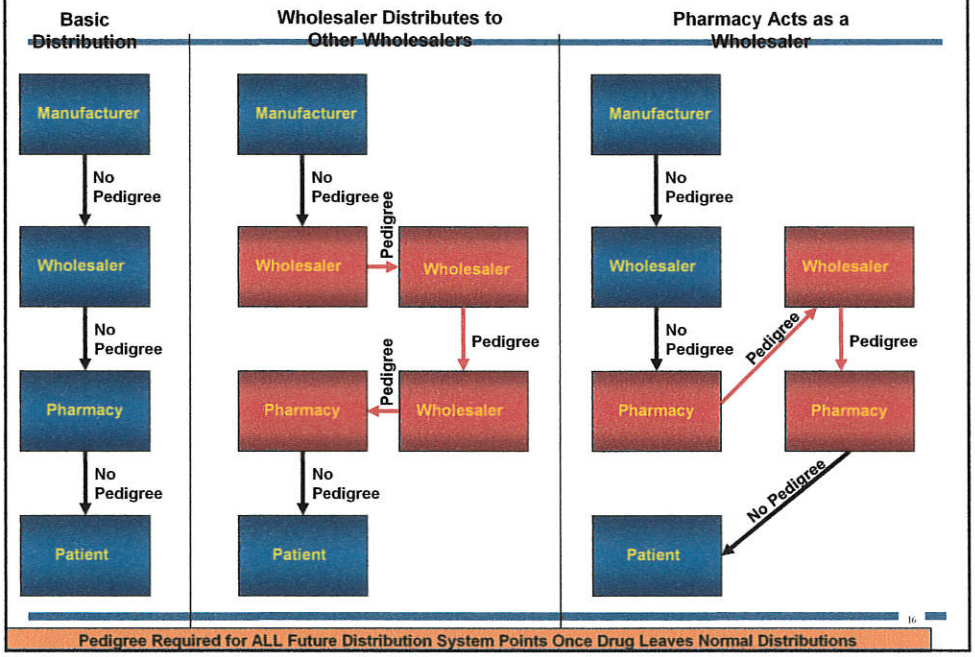
Understanding HB 2531

- Essentially addresses licensing of wholesale distributors
- Other legislation (HB 2392) addresses three components
  - Licensure / Accreditation
  - **Distribution**
  - Penalties

15

A BRIEF Look at the Distribution World:
Basic Normal Distribution v. Outside Normal Distribution



16

Pedigree Required for ALL Future Distribution System Points Once Drug Leaves Normal Distributions

10-8

Passed Full Pedigree

- Arizona
- California
- Colorado
- Florida
- Indiana
- Iowa
- Nebraska
- Nevada
- New Jersey
- Oregon (IN BOP Regs)
- Texas
- Vermont
- Virginia

Legislation Introduced in 2007

* Introduced in 2006 but died – will be reintroduced

- Alabama
- Alaska
- Arkansas
- Connecticut*
- Delaware
- Georgia*
- Idaho
- Illinois
- Kansas
- Kentucky
- Maryland
- Maine
- Massachusetts
- Minnesota
- Missouri*
- Montana
- New York*
- North Dakota
- Ohio
- Pennsylvania
- South Dakota
- Tennessee
- Utah
- Washington
- Wisconsin*
- Wyoming

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Ronald R. Hein
Attorney-at-Law
Email: rhein@heinlaw.com

Testimony re: HB 2531
Senate Ways and Means Committee
Presented by Julie J. Hein
on behalf of
Kansas Pharmacy Coalition
March 28, 2007

Mr. Chair and Members of the Committee:

My name is Julie Hein and I am speaking on behalf of the Kansas Pharmacy Coalition (KPC). The Kansas Pharmacy Coalition is an ad hoc coalition comprised of the Kansas Pharmacists Association (KPhA) and the Kansas Association of Chain Drug Stores (KACDS).

KPC supports HB 2531.

HB 2531is the final work product of the Board of Pharmacy after interim study of the Wholesale Licensure and Pedigree issues. This bill will increase the requirements and provide additional safe guards for those choosing to be a wholesaler of prescription drugs in Kansas. Numerous stakeholders were involved in this discussion and the discussions took place over several meetings. We support the conclusion of the Board on this issue.

We requested clarifying amendments, worked with the Board of Pharmacy on those suggestions and those amendments are included in this version of the bill.

We support HB 2531 and would urge your support and passage of this bill.

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

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STATE OF KANSAS

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SENATOR MIKE PETERSEN

COMMITTEES
ELECTIONS & LOCAL GOVERNMENT
TRANSPORTATION
UTILITIES

JT. COMMITTEE ON
INFORMATION TECHNOLOGY

Testimony before the Kansas Senate Ways and Means Committee
Presented on Wednesday, March 28, 2007

Mr. Chairman and Members of the Committee, I would like to thank you for the opportunity to present testimony on HB 2531. This bill needs to be amended to define the normal distribution channel of a prescription drug from the manufacturer to its intended recipient. This bill would make clear and help to ensure that prescription drugs are being delivered in a safe and legal manner. HB 2531 is an important step to make certain that our prescription drugs are being handled properly and securely. It is important to consumers in our state that they have confidence in the drugs prescribed to them. Please give your full consideration to the safety of the complex process of pharmaceutical distribution.

Respectfully submitted,

Mike Petersen

Mike Petersen
Senate, District 28

Senate Ways and Means
3-28-07
Attachment 12

FOR IMMEDIATE RELEASE:

Contact: Gertrude Levine
847-391-4497

The National Association of Boards of Pharmacy Warns About the Continued Dangers of Counterfeit Prescription Drugs

2006 Unprecedented Year of Increased Fake Drug Production, Introduction into U.S. Drug Supply

Washington, D.C., January 11, 2007 – Amid increased concern over the growing epidemic of counterfeit drugs, the National Association of Boards of Pharmacy (NABP) issued the following information concerning worldwide counterfeiting activity. Much of this increased activity is aimed a pharmacy outlets in the United States. According to a 2006 World Health Organization report, the current prevalence of counterfeit medicines can range to over 10 percent of the drug supply globally.

NABP notes that in 2006:

- **United States**
  Nineteen people were indicted in Detroit, Michigan, for importing and distributing counterfeit products, to include pharmaceuticals. A portion of the proceeds were used to fund the terrorist organization Hezbollah.

  Eleven people in Georgia, North Carolina, South Dakota and the Central American nation of Belize were indicted on charges of selling counterfeit prescription drugs over the Internet. Investigators believe many of the drugs had little or no medicinal value, and that those behind the scam netted more than $19 million.

- **Canada**
  One of Canada's largest Internet pharmacies is selling counterfeit versions of Lipitor, Crestor, Celebrex and seven other drugs, according to the Food and Drug Administration (FDA). These counterfeits were seized en route to American patients.

- **Mexico**
  Eleven tons of counterfeit, expired, stolen, or illegally imported medicines were reported seized by Mexican authorities in Mexico City, Guadalajara, Jalisco, and Morelia in November 2006. Six individuals were arrested and fourteen more are under investigation according to Mexican news sources.

- **South America**
  It is reported that in underdeveloped countries such as Argentina, Colombia, and Mexico, up to 40 percent of manufactured pharmaceuticals are believed to be counterfeit.

- **United Kingdom**
  In July 2005, 70 packs of counterfeit Lipitor, marked with genuine batch numbers, were found in two separate licensed wholesalers in the UK. Dutch customs intercepted a consignment of counterfeit Lipitor bound for Canada and found 10,000 packs in UK packaging. The British Medicines and Healthcare Products Regulatory Agency (MHRA) recalled the suspect batch numbers and more than half the 520 packs returned were found to be counterfeit. Around 2,500 counterfeit packs had already been consumed or discarded by the National Health Service patients. Days after that incident came to light a second batch of counterfeit Lipitor was found.

- **China**
  In China, authorities believe that for some drugs, the estimated average of counterfeit copies can be as high as 50 percent. Chinese police dealt with more than 4,600 cases involving counterfeit and inferior goods from January to November 2006, according to the Ministry of Public Security. One of the most serious cases was the use of tainted drugs manufactured by Qiqihar No. 2 Pharmaceutical Co., which left 11 people dead.

- **India**
  20% of medicines sold across India are fake or counterfeit, according to the Associated Chambers of Commerce of India. Of the 20% fake medicines, 60% are without active ingredients, 19% have wrong ingredients while 16% have harmful and inappropriate ingredients, such as talcum powder.

Legislation to curb the instances of counterfeit drugs entering the U.S. supply has been introduced in 2006 on both the federal and state levels. This includes legislation requiring everyone in the drug-supply chain to adopt more secure business practices and instituting tougher criminal penalties those found manufacturing and distributing counterfeits.

"Individuals who depend on medications should have the peace of mind that what they are taking to make them better is in fact doing so, and not endangering their health." said Carmen Catizone MS, RPh, DPh, executive director/secretary of the NABP. "We will continue to work with state and federal governments to ensure prescription drug safety for the future and hope that the safety of America's drug supply remains a priority in Washington."

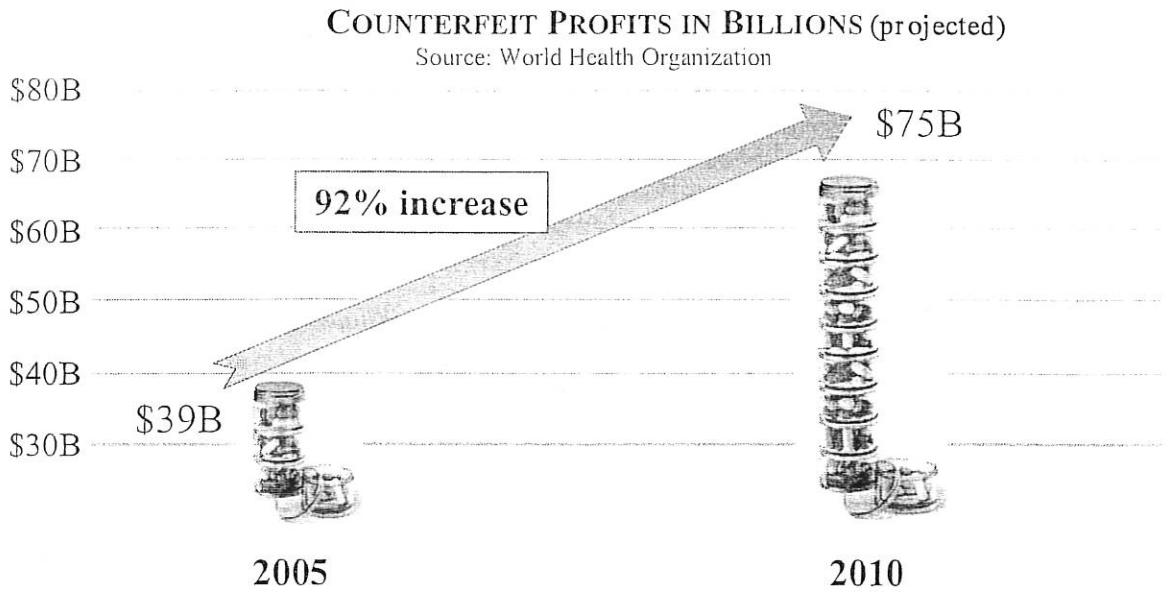
Also in 2006, NABP introduced a web site to help educate the public about the dangers of counterfeits and steps they can take to protect themselves. For more information, visit www.dangerouspill.com.

The National Association of Boards of Pharmacy (NABP) was founded in 1904 and represents all of the pharmacy regulatory and licensing jurisdictions in the United States, the District of Columbia, Puerto Rico, Guam, the Virgin Islands, eight provinces of Canada, two Australian States, New Zealand, and South Africa. Its purpose is to serve as the independent, international, and impartial Association that assists its member boards and jurisdictions in developing, implementing, and enforcing uniform standards for the purpose of protecting the public health.

Counterfeit Drugs are a Problem.

"The criminals are very savvy business people and they see an opportunity. They sell counterfeit drugs, because that is where the money is."

-Peter Pitts, director of CMPI and the FDA's former associate commissioner for external relations.



Counterfeit Drugs More Lucrative Than Heroin

The main reason for the sudden rash of counterfeit drugs is, in a word, money. Criminals are getting wise to the fact that there are enormous profits to be made in fake pharmaceuticals. Americans spent $203 billion on prescription drugs in 2003, according to statistics from the National Association of Chain Drug Stores. Any counterfeiter who manages to nab a tiny sliver of the pie can make a fortune.

"Some of the experts are telling us it's more lucrative to sell a counterfeit drug than it is a narcotic such as heroin," William Hubbard, FDA's associate commissioner for policy and planning, tells WebMD. Nor is counterfeiting limited to small-time hustlers looking to turn a quick buck. "We're seeing **organized criminal elements** getting involved."

-WebMD

"Sales of counterfeit prescription medicines are forecast to reach $75 billion by the end of the decade, nearly doubling current levels and outgrowing the annual growth rate of legitimate pharmaceutical sales."

-Health Business Week, December 30, 2005

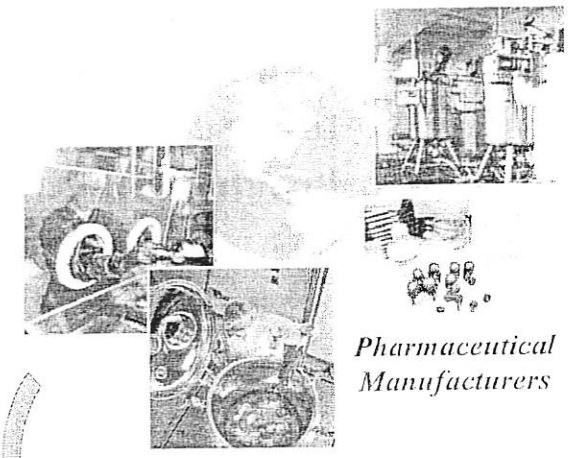
"No country is immune to the threat of counterfeit drugs." according to Tom Kubic, executive director, Pharmaceutical Security Institute, a member of the Partnership for Safe Medicines.

-Med Ad News, October 1, 2005

"The Internet is facilitating the globalization of counterfeit drugs. I don't think the primary reason is even pricing, because Africa and Asia and Europe are suffering from the same problems that North America is."

-Washington Drug Letter, September 26, 2005

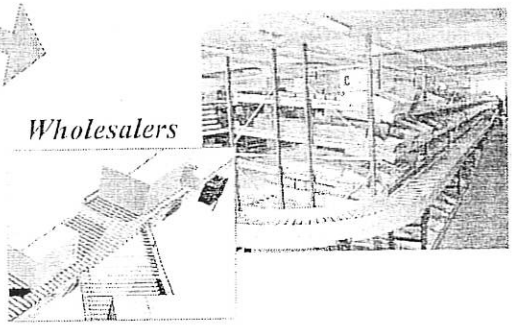
How Counterfeit Drugs are Entering the Supply Chain



Pharmaceutical Manufacturers

Drugs are shipped in bulk from drug manufacturers to wholesalers.

Wholesalers repackage the drugs into smaller boxes and resell the medicine to retailers such as pharmacies & hospitals, where they can be safely prescribed to patients.



Wholesalers

Counterfeiters get drugs from wholesalers, add their own phony drugs, and sell the mixed up boxes back to the wholesalers & retailers — where they may be inadvertently dispensed to patients.

Pharmacies

Hospitals

The Solution

Fueled by growing fears over the safety and efficacy of the nation's drug supply and by a number of highly publicized cases involving tainted or counterfeit drugs, **more than two dozen states have enacted or are considering new and far tougher documentation requirements on every drug sold or distributed in their jurisdictions.** And some of those states are demanding not just an electronic record, but a paper trail, as well.

Omaha World-Herald

Fake drug's packager says it's not his fault Med-Pro's owner says the tablets being recalled looked exactly like the real drug.

By Virgil Larson, Omaha World Herald, May 28, 2003

The owner of a Lexington, Neb., company said Tuesday that while his company packaged 100,000 bottles that the FDA says contained counterfeit Lipitor, his company has no responsibility for whether the pills were the real thing.

Rick Rounsborg issued a statement saying the tablets that Med-Pro Inc. repackaged for a Kansas City, Mo., distributor were the same shape, size and color and had the "exact same markings" as Lipitor samples. Lipitor is a cholesterol-fighting drug.

Med-Pro got the tablets in bulk and repackaged them in accordance with Food and Drug Administration regulations, the statement said. The company said it then shipped them to various places as directed by Albers Medical Distributors Inc., the Kansas City firm.

"It's not a recall of anything we did," Rounsborg said in an interview.

Albers voluntarily recalled the tablets, the FDA announced Friday as it warned that the counterfeit Lipitor poses a health risk to users.

The 90-tablet bottles that were recalled carry the notation "Repackaged by: Med-Pro, Inc. Lexington, Neb." on the label. The lot numbers recalled are 20722V and 16942V, both with an expiration date of September 2004, and 04132V, expiring in January 2004.

People should not use the tablets, and the pills should be returned to pharmacies, the FDA said.

Med-Pro said the original labeling on the tablets it received for repackaging for Albers showed that the product was made by Warner-Lambert Export Ltd. in Dublin, Ireland. It said the bulk product was in what Med-Pro believes to be the manufacturer's original packaging.

Pfizer acquired Warner-Lambert and Lipitor.

Rounsborg referred questions to Albers, which referred questions to the FDA. Spokeswoman Indya Mungo said the FDA was continuing an investigation into counterfeit Lipitor that the agency disclosed Friday when it announced the recall. Mungo said she had no new information.

The FDA has not said what is dangerous about the pills.

Lipitor is the world's largest-selling pharmaceutical. Pfizer sells $ 8 billion worth a year.

Pfizer spokespeople could not be reached Tuesday.

Rounsborg said he bought Med-Pro, which was started in 1985, in 1999. The company had

Proposed amendment
Senator V. Schmidt
March 27, 2007

Senate Ways and Means
3-28-07
Attachment 13

As Amended by House Committee

Session of 2007

HOUSE BILL No. 2531

By Committee on Appropriations

2-15

AN ACT ~~concerning the pharmacy act of the state of Kansas; amending~~ K.S.A. ~~65-1627~~ and 65-1655 and K.S.A. 2006 Supp. ~~65-1626~~ and 65-1643 ~~and repealing the existing sections~~.

40-2123,

60-4403,

; also repealing KSA 2006 Supp. 65-1626c

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 2006 Supp. ~~65-1626~~ is hereby amended to read as follows: 65-1626. For the purposes of this act:

(a) "Administer" means the direct application of a drug, whether by injection, inhalation, ingestion or any other means, to the body of a patient or research subject by:

(1) A practitioner or pursuant to the lawful direction of a practitioner;

(2) the patient or research subject at the direction and in the presence of the practitioner; or

(3) a pharmacist as authorized in K.S.A. 65-1635a and amendments thereto.

(b) "Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor or dispenser but shall not include a common carrier, public warehouseman or employee of the carrier or warehouseman when acting in the usual and lawful course of the carrier's or warehouseman's business.

(c) "Board" means the state board of pharmacy created by K.S.A. 74-1603 and amendments thereto.

(d) "Brand exchange" means the dispensing of a different drug product of the same dosage form and strength and of the same generic name than the brand name drug product prescribed.

(e) "Brand name" means the registered trademark name given to a drug product by its manufacturer, labeler or distributor.

(f) "Chain pharmacy warehouse" means a permanent physical location for drugs or devices, or both, that act as a central warehouse and perform intracompany sales ~~*and*~~ **or** *transfers of prescription drugs or devices to chain pharmacies,* ~~*which are members of the same affiliated group, under common*~~ **that have the same** *ownership* ~~*and*~~ **or** *control. Chain pharmacy warehouses must be* ~~*licensed*~~ **registered** *as wholesale distributors.*

Section 1. K.S.A. 40-2123 is hereby amended to read as follows: 40-2123 [see attached.]
Sec. 2. K.S.A. 2006 Supp. 60-4403 is hereby amended to read as follows: 60-4403 [see attached.]

Renumber the remaining sections accordingly.

[These two sections are added as technical amendments, the internal references need to be amended.]

(c) "Authorized distributor of record" means a wholesale distributor with whom a manufacturer has established an ongoing relationship to distribute the manufacturer's prescription drug. An ongoing relationship is deemed to exist between such wholesale distributor and a manufacturer when the wholesale distributor, including any affiliated group of the wholesale distributor, as defined in section 1504 of the internal revenue code, complies with any one of the following: (1) The wholesale distributor has a written agreement currently in effect with the manufacturer evidencing such ongoing relationship; and (2) the wholesale distributor is listed on the manufacturer's current list of authorized distributors of record, which is updated by the manufacturer on no less than a monthly basis.

Reletter remaining subsections accordingly.

13-2

(g) "Co-licensee" means a pharmaceutical manufacturer that has entered into an agreement with another pharmaceutical manufacturer to engage in a business activity or occupation related to the ~~manufacturer~~ **manufacture** *or distribution of a prescription drug and the national drug code on the drug product label shall be used to determine the identity of the drug manufacturer.*

~~(f)~~ *(h)* "Deliver" or "delivery" means the actual, constructive or attempted transfer from one person to another of any drug whether or not an agency relationship exists.

~~(g)~~ *(i)* "Direct supervision" means the process by which the responsible pharmacist shall observe and direct the activities of a pharmacy student or pharmacy technician to a sufficient degree to assure that all such activities are performed accurately, safely and without risk or harm to patients, and complete the final check before dispensing.

~~(h)~~ *(j)* "Dispense" means to deliver prescription medication to the ultimate user or research subject by or pursuant to the lawful order of a practitioner or pursuant to the prescription of a mid-level practitioner.

~~(i)~~ *(k)* "Dispenser" means a practitioner or pharmacist who dispenses prescription medication.

~~(j)~~ *(l)* "Distribute" means to deliver, other than by administering or dispensing, any drug.

~~(k)~~ *(m)* "Distributor" means a person who distributes a drug.

~~(l)~~ *(n)* "Drug" means: (1) Articles recognized in the official United States pharmacopoeia, or other such official compendiums of the United States, or official national formulary, or any supplement of any of them; (2) articles intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animals; (3) articles, other than food, intended to affect the structure or any function of the body of man or other animals; and (4) articles intended for use as a component of any articles specified in clause (1), (2) or (3) of this subsection; but does not include devices or their components, parts or accessories, except that the term "drug" shall not include amygdalin (laetrile) or any livestock remedy, if such livestock remedy had been registered in accordance with the provisions of article 5 of chapter 47 of the Kansas Statutes Annotated prior to its repeal.

(o) "Durable medical equipment" means technologically sophisticated medical devices that may be used in a residence, including the following: (1) Oxygen and oxygen delivery system; (2) ventilators; (3) respiratory disease management devices; (4) continuous positive airway pressure (CPAP) devices; (5) electronic and computerized wheelchairs and seating systems; (6) apnea monitors; (7) transcutaneous electrical nerve stimulator (TENS) units; (8) low air loss cutaneous pressure management devices; (9) sequential compression devices; (10) feeding pumps; (11) home pho-

(n) "Drop shipment" means the sale, by a manufacturer, that manufacturer's co-licensee, that manufacturer's third party logistics provider, or that manufacturer's exclusive distributor, of the manufacturer's prescription drug, to a wholesale distributor whereby the wholesale distributor takes title but not possession of such prescription drug and the wholesale distributor invoices the pharmacy, the chain pharmacy warehouse, or other designated person authorized by law to dispense or administer such prescription drug, and the pharmacy, the chain pharmacy warehouse, or other designated person authorized by law to dispense or administer such prescription drug receives delivery of the prescription drug directly from the manufacturer, that manufacturer's co-licensee, that manufacturer's third party logistics provider, or that manufacturer's exclusive distributor, of such prescription drug. Drop shipments shall be part of the "normal distribution channel".

Reletter accordingly.

totherapy devices; (12) infusion delivery devices; (13) distribution of medical gases to end users for human consumption; (14) hospital beds; (15) nebulizers; (16) other similar equipment determined by the board in rules and regulations adopted by the board.

(p) "Exclusive distributor" means any entity that: (1) Contracts with a manufacturer to provide or coordinate warehousing, wholesale distribution or other services on behalf of a manufacturer and who takes title to that manufacturer's prescription drug, but who does not have general responsibility to direct the sale or disposition of the manufacturer's prescription drug; (2) is ~~licensed~~ **registered** *as a wholesale distributor under the pharmacy act of the state of Kansas; and (3) to be considered part of the ~~national~~* **normal** *distribution channel, must be an authorized distributor of record.*

~~(m)~~ *(q)* "Electronic transmission" means transmission of information in electronic form or the transmission of the exact visual image of a document by way of electronic equipment.

~~(n)~~ *(r)* "Generic name" means the established chemical name or official name of a drug or drug product.

~~(o)~~ *(s)* (1) "Institutional drug room" means any location where prescription-only drugs are stored and from which prescription-only drugs are administered or dispensed and which is maintained or operated for the purpose of providing the drug needs of:

(A) Inmates of a jail or correctional institution or facility;

(B) residents of a juvenile detention facility, as defined by the Kansas code for care of children and the revised Kansas juvenile justice code;

revised

(C) students of a public or private university or college, a community college or any other institution of higher learning which is located in Kansas;

(D) employees of a business or other employer; or

(E) persons receiving inpatient hospice services.

(2) "Institutional drug room" does not include:

(A) Any registered pharmacy;

(B) any office of a practitioner; or

(C) a location where no prescription-only drugs are dispensed and no prescription-only drugs other than individual prescriptions are stored or administered.

(t) "Intracompany transaction" means any transaction or transfer between any division, subsidiary, parent or affiliated or related company under common ownership or control of a corporate entity, or any transaction or transfer between co-licensees of a co-licensed product.

~~(p)~~ ~~(t)~~ **(u)** "Medical care facility" shall have the meaning provided in K.S.A. 65-425 and amendments thereto, except that the term shall also

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include facilities licensed under the provisions of K.S.A. 75-3307b and amendments thereto except community mental health centers and facilities for the mentally retarded.

~~(q)~~ ~~(u)~~ **(v)** "Manufacture" means the production, preparation, propagation, compounding, conversion or processing of a drug either directly or indirectly by extraction from substances of natural origin, independently by means of chemical synthesis or by a combination of extraction and chemical synthesis and includes any packaging or repackaging of the drug or labeling or relabeling of its container, except that this term shall not include the preparation or compounding of a drug by an individual for the individual's own use or the preparation, compounding, packaging or labeling of a drug by: (1) A practitioner or a practitioner's authorized agent incident to such practitioner's administering or dispensing of a drug in the course of the practitioner's professional practice; (2) a practitioner, by a practitioner's authorized agent or under a practitioner's supervision for the purpose of, or as an incident to, research, teaching or chemical analysis and not for sale; or (3) a pharmacist or the pharmacist's authorized agent acting under the direct supervision of the pharmacist for the purpose of, or incident to, the dispensing of a drug by the pharmacist.

~~(r)~~ ~~(v)~~ **(w)** "Person" means individual, corporation, government, governmental subdivision or agency, partnership, association or any other legal entity.

~~(s)~~ ~~(w)~~ **(x)** "Pharmacist" means any natural person licensed under this act to practice pharmacy.

~~(t)~~ ~~(x)~~ **(y)** "Pharmacist in charge" means the pharmacist who is responsible to the board for a registered establishment's compliance with the laws and regulations of this state pertaining to the practice of pharmacy, manufacturing of drugs and the distribution of drugs. The pharmacist in charge shall supervise such establishment on a full-time or a part-time basis and perform such other duties relating to supervision of a registered establishment as may be prescribed by the board by rules and regulations. Nothing in this definition shall relieve other pharmacists or persons from their responsibility to comply with state and federal laws and regulations.

~~(u)~~ ~~(y)~~ **(z)** "Pharmacy," "drug store" or "apothecary" means premises, laboratory, area or other place: (1) Where drugs are offered for sale where the profession of pharmacy is practiced and where prescriptions are compounded and dispensed; or (2) which has displayed upon it or within it the words "pharmacist," "pharmaceutical chemist," "pharmacy," "apothecary," "drugstore," "druggist," "drugs," "drug sundries" or any of these words or combinations of these words or words of similar import either in English or any sign containing any of these words; or (3) where the characteristic symbols of pharmacy or the characteristic prescription sign

(x) "Manufacturer" means a person licensed or approved by the FDA to engage in the manufacture of drugs and devices.

(y) "Normal distribution channel" means a chain of custody for a prescription-only drug that goes from a manufacturer of the prescription-only drug, from that manufacturer to that manufacturer's co-licensed partner, from that manufacturer to that manufacturer's third-party logistics provider, or from that manufacturer to that manufacturer's exclusive distributor, directly or by drop shipment, to:

(1) A pharmacy to a patient; or to other designated persons authorized by law to dispense or administer such drug to a patient;

(2) a wholesale distributor to a pharmacy to a patient or other designated persons authorized by law to dispense or administer such drug to a patient;

(3) a wholesale distributor to a chain pharmacy warehouse to that chain pharmacy warehouse's intracompany pharmacy to a patient or other designated persons authorized by law to dispense or administer such drug to a patient; or

(4) a chain pharmacy warehouse to the chain pharmacy warehouse's intracompany pharmacy to a patient or other designated persons authorized by law to dispense or administer such drug to a patient.

Reletter remaining subsections accordingly.

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"Rx" may be exhibited. As used in this subsection, premises refers only to the portion of any building or structure leased, used or controlled by the licensee in the conduct of the business registered by the board at the address for which the registration was issued.

~~(v)~~ ~~(z)~~ **(aa)** "Pharmacy student" means an individual, registered with the board of pharmacy, enrolled in an accredited school of pharmacy.

~~(w)~~ ~~(aa)~~ **(bb)** "Pharmacy technician" means an individual who, under the direct supervision and control of a pharmacist, may perform packaging, manipulative, repetitive or other nondiscretionary tasks related to the processing of a prescription or medication order and who assists the pharmacist in the performance of pharmacy related duties, but who does not perform duties restricted to a pharmacist.

~~(x)~~ ~~(bb)~~ **(cc)** "Practitioner" means a person licensed to practice medicine and surgery, dentist, podiatrist, veterinarian, optometrist licensed under the optometry law as a therapeutic licensee or diagnostic and therapeutic licensee, or scientific investigator or other person authorized by law to use a prescription-only drug in teaching or chemical analysis or to conduct research with respect to a prescription-only drug.

~~(y)~~ ~~(cc)~~ **(dd)** "Preceptor" means a licensed pharmacist who possesses at least two years' experience as a pharmacist and who supervises students obtaining the pharmaceutical experience required by law as a condition to taking the examination for licensure as a pharmacist.

~~(z)~~ ~~(dd)~~ **(ee)** "Prescription" means, according to the context, either a prescription order or a prescription medication.

~~(aa)~~ ~~(ee)~~ **(ff)** "Prescription medication" means any drug, including label and container according to context, which is dispensed pursuant to a prescription order.

~~(bb)~~ ~~(ff)~~ **(gg)** "Prescription-only drug" means any drug whether intended for use by man or animal, required by federal or state law (including 21 United States Code section 353, as amended) to be dispensed only pursuant to a written or oral prescription or order of a practitioner or is restricted to use by practitioners only.

~~(cc)~~ ~~(gg)~~ **(hh)** "Prescription order" means: (1) An order to be filled by a pharmacist for prescription medication issued and signed by a practitioner or a mid-level practitioner in the authorized course of professional practice; or (2) an order transmitted to a pharmacist through word of mouth, note, telephone or other means of communication directed by such practitioner or mid-level practitioner.

~~(dd)~~ ~~(hh)~~ **(ii)** "Probation" means the practice or operation under a temporary license, registration or permit or a conditional license, registration or permit of a business or profession for which a license, registration or permit is granted by the board under the provisions of the pharmacy act of the state of Kansas requiring certain actions to be

accomplished or certain actions not to occur before a regular license, registration or permit is issued.

~~(ee)~~ ~~(ii)~~ **(jj)** "Professional incompetency" means:

(1) One or more instances involving failure to adhere to the applicable standard of pharmaceutical care to a degree which constitutes gross negligence, as determined by the board;

(2) repeated instances involving failure to adhere to the applicable standard of pharmaceutical care to a degree which constitutes ordinary negligence, as determined by the board; or

(3) a pattern of pharmacy practice or other behavior which demonstrates a manifest incapacity or incompetence to practice pharmacy.

~~(ff)~~ ~~(jj)~~ **(kk)** "Retail dealer" means a person selling at retail nonprescription drugs which are prepackaged, fully prepared by the manufacturer or distributor for use by the consumer and labeled in accordance with the requirements of the state and federal food, drug and cosmetic acts. Such nonprescription drugs shall not include: (1) A controlled substance; (2) a prescription-only drug; or (3) a drug intended for human use by hypodermic injection.

~~(gg)~~ ~~(kk)~~ **(ll)** "Secretary" means the executive secretary of the board.

~~(ll)~~ **(mm)** *"Third party logistics provider" means an entity that: (1) Provides or coordinates warehousing, distribution or other services on behalf of a manufacturer, but does not take title to the prescription drug or have general responsibility to direct the prescription drug's sale or disposition; (2) is* ~~*licensed*~~ **registered** *as a wholesale distributor under the pharmacy act of the state of Kansas; and (3) to be considered part of the normal distribution channel, must also be an authorized distributor of record.*

~~(hh)~~ ~~(mm)~~ **(nn)** "Unprofessional conduct" means:

(1) Fraud in securing a registration or permit;

(2) intentional adulteration or mislabeling of any drug, medicine, chemical or poison;

(3) causing any drug, medicine, chemical or poison to be adulterated or mislabeled, knowing the same to be adulterated or mislabeled;

(4) intentionally falsifying or altering records or prescriptions;

(5) unlawful possession of drugs and unlawful diversion of drugs to others;

(6) willful betrayal of confidential information under K.S.A. 65-1654 and amendments thereto;

(7) conduct likely to deceive, defraud or harm the public;

(8) making a false or misleading statement regarding the licensee's professional practice or the efficacy or value of a drug;

(9) commission of any act of sexual abuse, misconduct or exploitation related to the licensee's professional practice; or

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(10) performing unnecessary tests, examinations or services which have no legitimate pharmaceutical purpose.

~~(ii)~~ ~~*(nn)*~~ **(oo)** "Mid-level practitioner" means an advanced registered nurse practitioner issued a certificate of qualification pursuant to K.S.A. 65-1131 and amendments thereto who has authority to prescribe drugs pursuant to a written protocol with a responsible physician under K.S.A. 65-1130 and amendments thereto or a physician assistant licensed pursuant to the physician assistant licensure act who has authority to prescribe drugs pursuant to a written protocol with a responsible physician under K.S.A. 65-28a08 and amendments thereto.

~~(jj)~~ ~~*(oo)*~~ **(pp)** "Vaccination protocol" means a written protocol, agreed to by a pharmacist and a person licensed to practice medicine and surgery by the state board of healing arts, which establishes procedures and recordkeeping and reporting requirements for administering a vaccine by the pharmacist for a period of time specified therein, not to exceed two years.

~~(kk)~~ ~~*(pp)*~~ **(qq)** "Veterinary medical teaching hospital pharmacy" means any location where prescription-only drugs are stored as part of an accredited college of veterinary medicine and from which prescription-only drugs are distributed for use in treatment of or administration to a non-human.

~~*(qq)*~~ **(rr)** *"Wholesale distributor" means any person engaged in wholesale distribution of prescription drugs or devices in or into the state, including, but not limited to, manufacturers, repackagers, own-label distributors, private-label distributors, jobbers, brokers, warehouses, including manufacturers' and distributors' warehouses, co-licensees, exclusive distributors, third party logistics providers, chain pharmacy warehouses* ~~*and*~~ **that conduct wholesale distributions,** *wholesale drug warehouses, independent wholesale drug traders and retail pharmacies that conduct wholesale distributions.* **Wholesale distributor shall not include persons engaged in the sale of durable medical equipment to consumers or patients.**

~~*(rr)*~~ **(ss)** *"Wholesale distribution" means the distribution of prescription drugs or devices by wholesale distributors to persons other than consumers or patients, and includes the transfer of prescription drugs by a pharmacy to another pharmacy* ~~*if the value of the goods transferred exceeds 5% of total prescription drug sales revenue of either the transferor or transferee pharmacy during any consecutive 12-month period*~~ **if the total number of units of transferred drugs during a twelve-month period does not exceed 5% of the total number of all units dispensed by the pharmacy during the immediately preceding twelve-month period.** *Wholesale distribution does not include: (1) The sale, purchase or trade of a prescription drug or device, an offer to sell, pur-*

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chase or trade a prescription drug or device or the dispensing of a prescription drug or device pursuant to a prescription; (2) the sale, purchase or trade of a prescription drug or device or an offer to sell, purchase or trade a prescription drug or device for emergency medical reasons; (3) intracompany transactions, **as defined in this section,** *unless in violation of own use provisions; (4) the sale, purchase or trade of a prescription drug or device or an offer to sell, purchase or trade a prescription drug or device among hospitals, chain pharmacy warehouses, pharmacies or other health care entities that are under common control; (5) the sale, purchase or trade of a prescription drug or device or the offer to sell, purchase or trade a prescription drug or device by a charitable organization described in 503 (c)(3) of the internal revenue code of 1954 to a nonprofit affiliate of the organization to the extent otherwise permitted by law; (6) the purchase or other acquisition by a hospital or other similar health care entity that is a member of a group purchasing organization of a prescription drug or device for its own use from the group purchasing organization or from other hospitals or similar health care entities that are members of these organizations; (7) the transfer of prescription drugs or devices between pharmacies pursuant to a centralized prescription processing agreement; (8) the sale, purchase or trade of blood and blood components intended for transfusion; (9) the return of recalled, expired, damaged or otherwise non-salable prescription drugs, when conducted by a hospital, health care entity, pharmacy, chain pharmacy warehouse or charitable institution in accordance with the board's rules and regulations; (10) the sale, transfer, merger or consolidation of all or part of the business of a retail pharmacy or pharmacies from or with another retail pharmacy or pharmacies, whether accomplished as a purchase and sale of stock or business assets, in accordance with the board's rules and regulations; (11) the distribution of drug samples by manufacturers' and authorized distributors' representatives;* ~~*or*~~ *(12) the sale of minimal quantities of drugs by retail pharmacies to licensed practitioners for office use*; **or (13) the sale or transfer from a retail pharmacy or chain pharmacy warehouse of expired, damaged, returned or recalled prescription drugs to the original manufacturer, originating wholesale distributor or to a third party returns processor in accordance with the board's rules and regulations**.

Sec. 2. K.S.A. 65-1627 is hereby amended to read as follows: 65-1627. (a) The board may revoke, suspend, place in a probationary status or deny a renewal of any license of any pharmacist upon a finding that:

(1) The license was obtained by fraudulent means;

(2) the licensee has been convicted of a felony and the licensee fails to show that the licensee has been sufficiently rehabilitated to warrant the public trust;

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(3) the licensee is found by the board to be guilty of unprofessional conduct or professional incompetency;

(4) the licensee is addicted to the liquor or drug habit to such a degree as to render the licensee unfit to practice the profession of pharmacy;

(5) the licensee has violated a provision of the federal or state food, drug and cosmetic act, the uniform controlled substances act of the state of Kansas, or any rule and regulation adopted under any such act;

(6) the licensee is found by the board to have filled a prescription not in strict accordance with the directions of the practitioner or a mid-level practitioner;

(7) the licensee is found to be mentally or physically incapacitated to such a degree as to render the licensee unfit to practice the profession of pharmacy;

(8) the licensee has violated any of the provisions of the pharmacy act of the state of Kansas or any rule and regulation adopted by the board pursuant to the provisions of such pharmacy act;

(9) the licensee has failed to comply with the requirements of the board relating to the continuing education of pharmacists;

(10) the licensee as a pharmacist in charge or consultant pharmacist under the provisions of subsection (c) or (d) of K.S.A. 65-1648 and amendments thereto has failed to comply with the requirements of subsection (c) or (d) of K.S.A. 65-1648 and amendments thereto;

(11) the licensee has knowingly submitted a misleading, deceptive, untrue or fraudulent misrepresentation on a claim form, bill or statement;

(12) the licensee has had a license to practice pharmacy revoked, suspended or limited, has been censured or has had other disciplinary action taken, or voluntarily surrendered the license after formal proceedings have been commenced, or has had an application for license denied, by the proper licensing authority of another state, territory, District of Columbia or other country, a certified copy of the record of the action of the other jurisdiction being conclusive evidence thereof;

(13) the licensee has self-administered any controlled substance without a practitioner's prescription order or a mid-level practitioner's prescription order; or

(14) the licensee has assisted suicide in violation of K.S.A. 21-3406 and amendments thereto as established by any of the following:

(A) A copy of the record of criminal conviction or plea of guilty for a felony in violation of K.S.A. 21-3406 and amendments thereto.

(B) A copy of the record of a judgment of contempt of court for violating an injunction issued under K.S.A. 2002 Supp. 60-4404 and amendments thereto.

(C) A copy of the record of a judgment assessing damages under K.S.A. 2002 Supp. 60-4405 and amendments thereto; or

(15) the licensee has failed to furnish the board, its investigators or its representatives any information legally requested by the board.

(b) In determining whether or not the licensee has violated subsection (a)(3), (a)(4), (a)(7) or (a)(13), the board upon reasonable suspicion of such violation has authority to compel a licensee to submit to mental or physical examination or drug screen, or any combination thereof, by such persons as the board may designate. To determine whether reasonable suspicion of such violation exists, the investigative information shall be presented to the board as a whole. Information submitted to the board as a whole and all reports, findings and other records shall be confidential and not subject to discovery by or release to any person or entity. The licensee shall submit to the board a release of information authorizing the board to obtain a report of such examination or drug screen, or both. A person affected by this subsection shall be offered, at reasonable intervals, an opportunity to demonstrate that such person can resume the competent practice of pharmacy with reasonable skill and safety to patients. For the purpose of this subsection, every person licensed to practice pharmacy and who shall accept the privilege to practice pharmacy in this state by so practicing or by the making and filing of a renewal application to practice pharmacy in this state shall be deemed to have consented to submit to a mental or physical examination or a drug screen, or any combination thereof, when directed in writing by the board and further to have waived all objections to the admissibility of the testimony, drug screen or examination report of the person conducting such examination or drug screen, or both, at any proceeding or hearing before the board on the ground that such testimony or examination or drug screen report constitutes a privileged communication. In any proceeding by the board pursuant to the provisions of this subsection, the record of such board proceedings involving the mental and physical examination or drug screen, or any combination thereof, shall not be used in any other administrative or judicial proceeding.

(c) The board may temporarily suspend or temporarily limit the license of any licensee in accordance with the emergency adjudicative proceedings under the Kansas administrative procedure act if the board determines that there is cause to believe that grounds exist for disciplinary action under subsection (a) against the licensee and that the licensee's continuation in practice would constitute an imminent danger to the public health and safety.

(d) The board may suspend, revoke, place in a probationary status or deny a renewal of any retail dealer's permit issued by the board when information in possession of the board discloses that such operations for which the permit was issued are not being conducted according to law or the rules and regulations of the board.

(e) The board may revoke, suspend, place in a probationary status or deny a renewal of the registration of a pharmacy upon a finding that: (1) Such pharmacy has been operated in such manner that violations of the provisions of the pharmacy act of the state of Kansas or of the rules and regulations of the board have occurred in connection therewith; (2) the owner or any pharmacist employed at such pharmacy is convicted, subsequent to such owner's acquisition of or such employee's employment at such pharmacy, of a violation of the pharmacy act or uniform controlled substances act of the state of Kansas, or the federal or state food, drug and cosmetic act; (3) the owner or any pharmacist employed by such pharmacy has fraudulently claimed money for pharmaceutical services; or (4) the registrant has had a registration revoked, suspended or limited, has been censured or has had other disciplinary action taken, or an application for registration denied, by the proper registering authority of another state, territory, District of Columbia or other country, a certified copy of the record of the action of the other jurisdiction being conclusive evidence thereof.

(f) A registration to manufacture ~~or~~ **drugs,** to distribute at wholesale a drug, ~~or~~ *to sell durable medical equipment* or a registration for the place of business where any such operation is conducted may be suspended, revoked, placed in a probationary status or the renewal of such registration may be denied by the board upon a finding that the registrant or the registrant's agent: (1) Has materially falsified any application filed pursuant to or required by the pharmacy act of the state of Kansas; (2) has been convicted of a felony under any federal or state law relating to the manufacture or distribution of drugs; (3) has had any federal registration for the manufacture or distribution of drugs suspended or revoked; (4) has refused to permit the board or its duly authorized agents to inspect the registrant's establishment in accordance with the provisions of K.S.A. 65-1629 and amendments thereto; (5) has failed to keep, or has failed to file with the board or has falsified records required to be kept or filed by the provisions of the pharmacy act of the state of Kansas or by the board's rules and regulations; or (6) has violated the pharmacy act of the state of Kansas or rules and regulations adopted by the state board of pharmacy under the pharmacy act of the state of Kansas or has violated the uniform controlled substances act or rules and regulations adopted by the state board of pharmacy under the uniform controlled substances act.

(g) Orders under this section, and proceedings thereon, shall be subject to the provisions of the Kansas administrative procedure act.

Sec. 3. K.S.A. 2006 Supp. 65-1643 is hereby amended to read as follows: 65-1643. It shall be unlawful:

(a) For any person to operate, maintain, open or establish any pharmacy within this state without first having obtained a registration from

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the board. Each application for registration of a pharmacy shall indicate the person or persons desiring the registration, including the pharmacist in charge, as well as the location, including the street name and number, and such other information as may be required by the board to establish the identity and exact location of the pharmacy. The issuance of a registration for any pharmacy shall also have the effect of permitting such pharmacy to operate as a retail dealer without requiring such pharmacy to obtain a retail dealer's permit. On evidence satisfactory to the board: (1) That the pharmacy for which the registration is sought will be conducted in full compliance with the law and the rules and regulations of the board; (2) that the location and appointments of the pharmacy are such that it can be operated and maintained without endangering the public health or safety; (3) that the pharmacy will be under the supervision of a pharmacist, a registration shall be issued to such persons as the board shall deem qualified to conduct such a pharmacy.

(b) For any person to manufacture within this state any drugs except under the personal and immediate supervision of a pharmacist or such other person or persons as may be approved by the board after an investigation and a determination by the board that such person or persons is qualified by scientific or technical training or experience to perform such duties of supervision as may be necessary to protect the public health and safety; and no person shall manufacture any such drugs without first obtaining a registration so to do from the board. Such registration shall be subject to such rules and regulations with respect to requirements, sanitation and equipment, as the board may from time to time adopt for the protection of public health and safety.

(c) For any person to distribute at wholesale any drugs without first obtaining a registration so to do from the board.

(d) For any person to sell or offer for sale at public auction or private sale in a place where public auctions are conducted, any drugs without first having obtained a registration from the board so to do, and it shall be necessary to obtain the permission of the board in every instance where any of the products covered by this section are to be sold or offered for sale.

(e) For any person to in any manner distribute or dispense samples of any drugs without first having obtained a permit from the board so to do, and it shall be necessary to obtain permission from the board in every instance where the samples are to be distributed or dispensed. Nothing in this subsection shall be held to regulate or in any manner interfere with the furnishing of samples of drugs to duly licensed practitioners, to mid-level practitioners, to pharmacists or to medical care facilities.

(f) Except as otherwise provided in this subsection (f), for any person operating a store or place of business to sell, offer for sale or distribute

any drugs to the public without first having obtained a registration or permit from the board authorizing such person so to do. No retail dealer who sells 12 or fewer different nonprescription drug products shall be required to obtain a retail dealer's permit under the pharmacy act of the state of Kansas or to pay a retail dealer new permit or permit renewal fee under such act. It shall be lawful for a retail dealer who is the holder of a valid retail dealer's permit issued by the board or for a retail dealer who sells 12 or fewer different nonprescription drug products to sell and distribute nonprescription drugs which are prepackaged, fully prepared by the manufacturer or distributor for use by the consumer and labeled in accordance with the requirements of the state and federal food, drug and cosmetic acts. Such nonprescription drugs shall not include: (1) A controlled substance; (2) a prescription-only drug; or (3) a drug product intended for human use by hypodermic injection; but such a retail dealer shall not be authorized to display any of the words listed in subsection (u) of K.S.A. 65-1626 and amendments thereto, for the designation of a pharmacy or drugstore.

(g) For any person to sell any drugs manufactured and sold only in the state of Kansas, unless the label and directions on such drugs shall first have been approved by the board.

(h) For any person to operate an institutional drug room without first having obtained a registration to do so from the board. Such registration shall be subject to the provisions of K.S.A. 65-1637a and amendments thereto and any rules and regulations adopted pursuant thereto.

(i) For any person to be a pharmacy student without first obtaining a registration to do so from the board, in accordance with rules and regulations adopted by the board, and paying a pharmacy student registration fee of $25 to the board.

(j) For any person to operate a veterinary medical teaching hospital pharmacy without first having obtained a registration to do so from the board. Such registration shall be subject to the provisions of K.S.A. 65-1662 and amendments thereto and any rules and regulations adopted pursuant thereto.

(k) For any person to sell or distribute in a pharmacy a controlled substance designated in subsection (e) or (f) of K.S.A. 65-4113, and amendments thereto, unless:

(1) (A) Such controlled substance is sold or distributed by a licensed pharmacist, a registered pharmacy technician or a pharmacy intern or clerk supervised by a licensed pharmacist; and

(B) any person purchasing, receiving or otherwise acquiring any such controlled substance produces a photo identification showing the date of birth of the person and signs a log. The log or database required by the board shall be available for inspection during regular business hours to

the board of pharmacy and any law enforcement officer; or

(2) there is a lawful prescription.

(l) For any person to sell or distribute in a pharmacy four or more packages or containers of any controlled substance designated in subsection (e) or (f) of K.S.A. 65-4113, and amendments thereto, to a specific customer within any seven-day period.

(m) For any person to sell **or lease** *or offer for sale* **or lease** *durable medical equipment without first obtaining a registration from the board,* **in accordance with rules and regulations adopted by the board, and paying a durable medical equipment registration fee set by the board not to exceed $300, except that this subsection shall not apply to:**

(1) Sales not made in the regular course of the person's business; or

(2) sales by charitable organizations exempt from federal income taxation pursuant to the internal revenue code of 1986, as amended.

Sec. 4. K.S.A. 65-1655 is hereby amended to read as follows: 65-1655. (a) The board shall require an applicant for registration to distribute at wholesale any drugs under K.S.A. 65-1643 and amendments thereto, or an applicant for renewal of such a registration, to provide the following information:

(1) The name, full business address and telephone number of the applicant;

(2) all trade or business names used by the applicant;

(3) addresses, telephone numbers, and the names of contact persons for all facilities used by the applicant for the storage, handling and distribution of prescription drugs;

(4) the type of ownership or operation of the applicant;

(5) the name of the owner or operator, or both, of the applicant, including:

(A) If a person, the name of the person;

(B) if a partnership, the name of each partner, and the name of the partnership;

(C) if a corporation, the name and title of each corporate officer and director, the corporate names and the name of the state of incorporation;

(D) if a sole proprietorship, the full name of the sole proprietor and the name of the business entity; and

(6) such other information as the board deems appropriate. Changes in any information in this subsection (a) shall be submitted to the board as required by such board.

(b) In reviewing the qualifications for applicants for initial registration or renewal of registration to distribute at wholesale any drugs, the board

shall consider the following factors:

(1) Any convictions of the applicant under any federal, state or local laws relating to drug samples, wholesale or retail drug distribution or distribution of controlled substances;

(2) any felony convictions of the applicant under federal or state laws;

(3) the applicant's past experience in the manufacture or distribution of prescription drugs, including controlled substances;

(4) the furnishing by the applicant of false or fraudulent material in any application made in connection with drug manufacturing or distribution;

(5) suspension or revocation by federal, state or local government of any license or registration currently or previously held by the applicant for the manufacture or distribution of any drugs, including controlled substances;

(6) compliance with registration requirements under previously granted registrations, if any;

(7) compliance with requirements to maintain or make available to the board or to federal state or local law enforcement officials those records required by federal food, drug and cosmetic act, and rules and regulations adopted pursuant thereto; and

(8) any other factors or qualifications the board considers relevant to and consistent with the public health and safety.

(c) After consideration of the qualifications for applicants for registration to distribute at wholesale any drugs, the board may deny an initial application for registration or application for renewal of a registration if the board determines that the granting of such registration would not be in the public interest. The authority of the board under this subsection to deny a registration to distribute at wholesale any drugs shall be in addition to the authority of the board under subsection (e) of K.S.A. 65-1627 and amendments thereto or subsection (e) of K.S.A. 65-1645 and amendments thereto.

(d) The board by rules and regulations shall require that personnel employed by persons registered to distribute at wholesale any drugs have appropriate education or experience, or both, to assume responsibility for positions related to compliance with state registration requirements.

(e) The board by rules and regulations may implement this section to conform to any requirements of the federal prescription drug marketing act of 1987 (21 U.S.C. 321 et seq.) in effect on the effective date of this act.

(f) Each facility that engages in wholesale distribution must undergo an inspection by the board or a third party recognized by the board to inspect and accredit wholesale distributors for the purpose of inspecting the wholesale distribution operations prior to initial ~~*licensure*~~ **registra-**

tion *and periodically thereafter in accordance with a schedule to be determined by the board but not less than once every three years. The board shall have the authority to waive* ~~*licensing*~~ **registration** *requirements for wholesale distributors that are accredited by an accrediting agency approved by the board.* **The board shall adopt rules and regulations to establish standards and requirements for the issuance and maintenance of a wholesale distributor registration, including inspections of wholesale distributor facilities domiciled in the state.**

(1) Individual or third party inspectors must demonstrate to the board that they have received training or demonstrate familiarity with the inspection standards. Evidence such as a letter of certification from a training program, notice from the inspector's employing third party organization or other means recognized by the board shall be accepted as meeting the requirement.

(2) The board may register a wholesale distributor that is licensed or registered under the laws of another state if:

(A) The requirements of that state are deemed by the board to be substantially equivalent; or

(B) the applicant is inspected and accredited by a third paty recognized and approved by the board; ~~**or**~~

~~**(C) the applicant has completed an internal audit and review according to standards approved by the board.**~~

(g) A person licensed or approved by the federal food and drug administration to engage in the manufacture of drugs or devices engaged in wholesale distribution need only satisfy the minimum federal requirements for licensure provided in federal food and drug administration regulations 21 C.F.R. Part 205 to provide wholesale distribution services.

(h) The board by rule and regulation shall establish standards and requirements for the issuance and maintenance of a wholesale distributor ~~*license*~~ **registration**, *including, but not limited to, requirements regarding the following: (1) An application and renewal fee; (2) a surety bond; (3)* ~~*licensing*~~ **registration** *and periodic inspections; (4) certification of a designated representative; (5) designation of a registered agent; (6) storage of drugs and devices; (7) handling, transportation and shipment of drugs and devices; (8) security; (9) examination of drugs and devices and treatment of those found to be unacceptable as defined by the board; (10) due diligence regarding other wholesale distributors; (11) creation and maintenance of records, including transaction records; and (12) procedures for operation.*

~~(f)~~ *(i)* This section shall be part of and supplemental to the pharmacy act of the state of Kansas.

Sec. 5. K.S.A. 65-1627 and 65-1655 and K.S.A. 2006 Supp. 65-1626 and 65-1643 are hereby repealed.

40-2123,

60-4403,

, 65-1626c

13-16

Sec. 6. This act shall take effect and be in force from and after its publication in the statute book.

13-17

Section 1. K.S.A. 40-2123 is hereby amended to read as follows: 40-2123. (a) The plan shall offer coverage to every eligible person pursuant to which such person's covered expenses shall be indemnified or reimbursed subject to the provisions of K.S.A. 40-2124 and amendments thereto.

(b) Except for those expenses set forth in subsection (c) of this section, expenses covered under the plan shall include expenses for:

(1) Services of persons licensed to practice medicine and surgery which are medically necessary for the diagnosis or treatment of injuries, illnesses or conditions;

(2) services of advanced registered nurse practitioners who hold a certificate of qualification from the board of nursing to practice in an expanded role or physicians assistants acting under the direction of a responsible physician when such services are provided at the direction of a person licensed to practice medicine and surgery and meet the requirements of paragraph (b)(1) above;

(3) services of licensed dentists when such procedures would otherwise be performed by persons licensed to practice medicine and surgery;

(4) emergency care, surgery and treatment of acute episodes of illness or disease as defined in the plan and provided in a general hospital or ambulatory surgical center as such terms are defined in K.S.A. 65-425, and amendments thereto;

(5) medically necessary diagnostic laboratory and x-ray services;

(6) drugs and controlled substances prescribed by a practitioner, as defined in ~~subsection (x)~~ of K.S.A. 65-1626 and amendments thereto, or drugs and controlled substances prescribed by a mid-level practitioner as defined in ~~subsection (ii) of~~ K.S.A. 65-1626 and amendments thereto. Coverage for outpatient prescriptions shall be subject to a mandatory 50% coinsurance provision, and coverage for prescriptions administered to inpatients shall be subject to a coinsurance provision as established in the plan; and

(7) subject to the approval of the commissioner, the board shall also review and recommend the inclusion of coverage for mental health services and such other primary and preventive health care services as the board determines would not materially impair affordability of the plan.

(c) Expenses not covered under the plan shall include expenses for:

(1) Illness or injury due to an act of war;

(2) services rendered prior to the effective date of coverage under this plan for the person on whose behalf the expense is incurred;

(3) services for which no charge would be made in the absence of insurance or for which the insured bears no legal obligation to pay;

(4) (A) services or charges incurred by the insured which are otherwise covered by:

(i) Medicare or state law or programs;

(ii) medical services provided for members of the United States armed forces and their dependents or for employees of such armed forces;

(iii) military service-connected disability benefits;

(iv) other benefit or entitlement

programs provided for by the laws of the United States (except title XIX of the social security act of 1965);

(v) workers compensation or similar programs addressing injuries, diseases, or conditions incurred in the course of employment covered by such programs;

(vi) benefits payable without regard to fault pursuant to any motor vehicle or other liability insurance policy or equivalent self-insurance.

(B) This exclusion shall not apply to services or charges which exceed the benefits payable under the applicable programs listed above and which are otherwise eligible for payment under this section.

(5) Services the provision of which is not within the scope of the license or certificate of the institution or individual rendering such service;

(6) that part of any charge for services or articles rendered or prescribed which exceeds the rate established by K.S.A. 40-2131 and amendments thereto for such services;

(7) services or articles not medically necessary;

(8) care which is primarily custodial or domiciliary in nature;

(9) cosmetic surgery unless provided as the result of an injury or medically necessary surgical procedure;

(10) eye surgery if corrective lenses would alleviate the problem;

(11) experimental services or supplies not generally recognized as the normal mode of treatment for the illness or injury involved;

(12) service of a blood donor and any fee for failure of the insured to replace the first three pints of blood provided in each calendar year; and

(13) personal supplies or services provided by a health care facility or any other nonmedical or nonprescribed supply or service.

(d) Except as expressly provided for in this act, no law requiring the coverage or the offer of coverage of a health care service or benefit shall apply to the plan.

(e) A plan may incorporate provisions that will direct covered persons to the most appropriate lowest cost health care provider available.

Sec. 2. K.S.A. 2006 Supp. 60-4403 is hereby amended to read as follows: 60-4403. (a) A licensed health care professional who administers, prescribes or dispenses medications or procedures to relieve another person's pain or discomfort does not violate K.S.A. 21-3406 and amendments thereto unless the medications or procedures are knowingly administered, prescribed or dispensed with the intent to cause death. A mid-level practitioner as defined in ~~subsection (ii) of~~ K.S.A. 65-1626 and amendments thereto who prescribes medications or procedures to relieve another person's pain or discomfort does not violate K.S.A. 21-3406 and amendments thereto unless the medications or procedures are knowingly prescribed with the intent to cause death.

(b) A licensed health care professional, family member or other legally authorized person who participates in the act of, or the decision making process which results in the withholding or withdrawal of a life-sustaining procedure does not violate K.S.A. 21-3406 and amendments thereto.

(c) Providing spiritual treatment

through prayer alone, in lieu of medical treatment, does not violate K.S.A. 21-3406 and amendments thereto.

Proposed technical amendment
March 28, 2007

Senate Ways and Means
3-28-07
Attachment 14

As Amended by House Committee

Session of 2007

HOUSE BILL No. 2531

By Committee on Appropriations

2-15

AN ACT concerning the pharmacy act of the state of Kansas; amending K.S.A. 65-1627 and 65-1655 and K.S.A. 2006 Supp. 65-1626 and 65-1643 and repealing the existing sections. , 65-1645

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 2006 Supp. 65-1626 is hereby amended to read as follows: 65-1626. For the purposes of this act:

(a) "Administer" means the direct application of a drug, whether by injection, inhalation, ingestion or any other means, to the body of a patient or research subject by:

(1) A practitioner or pursuant to the lawful direction of a practitioner;

(2) the patient or research subject at the direction and in the presence of the practitioner; or

(3) a pharmacist as authorized in K.S.A. 65-1635a and amendments thereto.

(b) "Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor or dispenser but shall not include a common carrier, public warehouseman or employee of the carrier or warehouseman when acting in the usual and lawful course of the carrier's or warehouseman's business.

(c) "Board" means the state board of pharmacy created by K.S.A. 74-1603 and amendments thereto.

(d) "Brand exchange" means the dispensing of a different drug product of the same dosage form and strength and of the same generic name than the brand name drug product prescribed.

(e) "Brand name" means the registered trademark name given to a drug product by its manufacturer, labeler or distributor.

(f) "Chain pharmacy warehouse" means a permanent physical location for drugs or devices, or both, that act as a central warehouse and perform intracompany sales ~~and~~ **or** *transfers of prescription drugs or devices to chain pharmacies~~, which are members of the same affiliated group, under common~~* **that have the same** *ownership ~~and~~* **or** *control. Chain pharmacy warehouses must be ~~licensed~~* **registered** *as wholesale distributors.*

the board of pharmacy and any law enforcement officer; or

(2) there is a lawful prescription.

(l) For any person to sell or distribute in a pharmacy four or more packages or containers of any controlled substance designated in subsection (e) or (f) of K.S.A. 65-4113, and amendments thereto, to a specific customer within any seven-day period.

(m) *For any person to sell* **or lease** *or offer for sale* **or lease** *durable medical equipment without first obtaining a registration from the board,* **in accordance with rules and regulations adopted by the board, ~~and paying a durable medical equipment registration fee set by the board not to exceed $300,~~ except that this subsection shall not apply to:**

(1) Sales not made in the regular course of the person's business; or

(2) sales by charitable organizations exempt from federal income taxation pursuant to the internal revenue code of 1986, as amended.

Sec. 4. K.S.A. 65-1655 is hereby amended to read as follows: 65-1655. (a) The board shall require an applicant for registration to distribute at wholesale any drugs under K.S.A. 65-1643 and amendments thereto, or an applicant for renewal of such a registration, to provide the following information:

(1) The name, full business address and telephone number of the applicant;

(2) all trade or business names used by the applicant;

(3) addresses, telephone numbers, and the names of contact persons for all facilities used by the applicant for the storage, handling and distribution of prescription drugs;

(4) the type of ownership or operation of the applicant;

(5) the name of the owner or operator, or both, of the applicant, including:

(A) If a person, the name of the person;

(B) if a partnership, the name of each partner, and the name of the partnership;

(C) if a corporation, the name and title of each corporate officer and director, the corporate names and the name of the state of incorporation;

(D) if a sole proprietorship, the full name of the sole proprietor and the name of the business entity; and

(6) such other information as the board deems appropriate. Changes in any information in this subsection (a) shall be submitted to the board as required by such board.

(b) In reviewing the qualifications for applicants for initial registration or renewal of registration to distribute at wholesale any drugs, the board

Sec. 4. KSA 65-1645 is hereby amended to read as follows: 65-1645 [see attached]

Renumber remaining sections accordingly.

14-2

tion *and periodically thereafter in accordance with a schedule to be determined by the board but not less than once every three years. The board shall have the authority to waive* ~~*licensing*~~ **registration** *requirements for wholesale distributors that are accredited by an accrediting agency approved by the board.* **The board shall adopt rules and regulations to establish standards and requirements for the issuance and maintenance of a wholesale distributor registration, including inspections of wholesale distributor facilities domiciled in the state.**

(1) Individual or third party inspectors must demonstrate to the board that they have received training or demonstrate familiarity with the inspection standards. Evidence such as a letter of certification from a training program, notice from the inspector's employing third party organization or other means recognized by the board shall be accepted as meeting the requirement.

(2) The board may register a wholesale distributor that is licensed or registered under the laws of another state if:

(A) The requirements of that state are deemed by the board to be substantially equivalent; or

(B) the applicant is inspected and accredited by a third paty recognized and approved by the board; or

(C) the applicant has completed an internal audit and review according to standards approved by the board.

(g) A person licensed or approved by the federal food and drug administration to engage in the manufacture of drugs or devices engaged in wholesale distribution need only satisfy the minimum federal requirements for licensure provided in federal food and drug administration regulations 21 C.F.R. Part 205 to provide wholesale distribution services.

(h) The board by rule and regulation shall establish standards and requirements for the issuance and maintenance of a wholesale distributor ~~*license*~~ **registration**, *including, but not limited to, requirements regarding the following: (1) An application and renewal fee; (2) a surety bond; (3)* ~~*licensing*~~ **registration** *and periodic inspections; (4) certification of a designated representative; (5) designation of a registered agent; (6) storage of drugs and devices; (7) handling, transportation and shipment of drugs and devices; (8) security; (9) examination of drugs and devices and treatment of those found to be unacceptable as defined by the board; (10) due diligence regarding other wholesale distributors; (11) creation and maintenance of records, including transaction records; and (12) procedures for operation.*

~~*(f)*~~ *(i)* This section shall be part of and supplemental to the pharmacy act of the state of Kansas.

Sec. 5. K.S.A. 65-1627 and 65-1655 and K.S.A. 2006 Supp. 65-1626 and 65-1643 are hereby repealed.

, 65-1645

14-3

Sec. 4. K.S.A. 65-1645 is hereby amended to read as follows: 65-1645. (a) Application for registrations or permits under K.S.A. 65-1643 and amendments thereto shall be made on a form prescribed and furnished by the board. Applications for registration to distribute at wholesale any drugs shall contain such information as may be required by the board in accordance with the provisions of K.S.A. 65-1655 and amendments thereto. The application shall be accompanied by the fee prescribed by the board under the provisions of this section. When such application and fees are received by the executive secretary of the board on or before the due date, such application shall have the effect of temporarily renewing the applicant's registration or permit until actual issuance or denial of the renewal. However, if at the time of filing a proceeding is pending before the board which may result in the suspension, probation, revocation or denial of the applicant's registration or permit, the board may declare, by emergency order, that such application for renewal shall not have the effect of temporarily renewing such applicant's registration or permit. Separate applications shall be made and separate registrations or permits issued for each separate place at which is carried on any of the operations for which a registration or permit is required by K.S.A. 65-1643 and amendments thereto except that the board may provide for a single registration for a business entity registered to manufacture any drugs or registered to distribute at wholesale any drugs and operating more than one facility within the state, or for a parent entity with divisions, subsidiaries or affiliate companies, or any combination thereof, within the state when operations are conducted at more than one location and there exists joint ownership and control among all the entities.

(b) The nonrefundable fees required for the issuing of the licenses, registrations or permits under the pharmacy act of the state of Kansas shall be fixed by the board as herein provided, subject to the following:

(1) Pharmacy, new registration not more than $150, renewal not more than $125;

(2) pharmacist, new license by examination not more than $350;

(3) pharmacist, reinstatement application fee not more than $250;

(4) pharmacist, biennial renewal fee not more than $200;

(5) pharmacist, evaluation fee not more than $250;

(6) pharmacist, reciprocal licensure fee not more than $250;

(7) pharmacist, penalty fee, not more than $500;

(8) manufacturer, new registration not more than $500, renewal not more than $400;

(9) wholesaler, new registration not more than $500, renewal not more than $400, except that a wholesaler dealing exclusively in nonprescription drugs, the manufacturing, distributing or dispensing of which does not require registration under the uniform controlled substances act, shall be assessed a fee for registration and reregistration not to exceed $50;

(10) special auction not more than $50;

(11) samples distribution not more than $50;

(12) institutional drug room, new registration not more than $40, renewal not

more than $35;

(13) retail dealer selling more than 12 different nonprescription drug products, new permit not more than $12, renewal not more than $12;

(14) certification of grades for each applicant for examination and registration not more than $25; ~~or~~

(15) veterinary medical teaching hospital pharmacy, new registration not more than $40, renewal not more than $35; or

(16) durable medical equipment registration fee, not more than $300.

(c) For the purpose of fixing fees, the board may establish classes of retail dealers' permits for retail dealers selling more than 12 different nonprescription drug products, and the board may fix a different fee for each such class of permit.

(d) The board shall determine annually the amount necessary to carry out and enforce the provisions of this act for the next ensuing fiscal year and shall fix by rules and regulations the fees authorized for such year at the sum deemed necessary for such purposes. The fees fixed by the board under this section immediately prior to the effective date of this act shall continue in effect until different fees are fixed by the board by rules and regulations as provided under this section.

(e) The board may deny renewal of any registration or permit required by K.S.A. 65-1643 and amendments thereto on any ground which would authorize the board to suspend, revoke or place on probation a registration or permit previously granted pursuant to the provisions of K.S.A. 65-1643 and amendments thereto. Registrations and permits issued under the provisions of K.S.A. 65-1643 and 65-1644 and amendments thereto shall be conspicuously displayed in the place for which the registration or permit was granted. Such registrations or permits shall not be transferable. All such registrations and permits except retail dealer permits shall expire on June 30 following date of issuance. Retail dealers' permits shall expire on the last day of February. All registrations and permits shall be renewed annually. Application blanks for renewal of registrations and permits shall be mailed by the board to each registrant or permittee at least 30 days prior to expiration of the registration or permit. If application for renewal is not made before 30 days after such expiration, the existing registration or permit shall lapse and become null and void on the date of its expiration, and no new registration or permit shall be granted except upon payment of the required renewal fee plus a penalty equal to the renewal fee. Failure of any registrant or permittee to receive such application blank shall not relieve the registrant or permittee from the penalty hereby imposed if the renewal is not made as prescribed.

(f) In each case in which a license of a pharmacist is issued or renewed for a period of time less than two years, the board shall prorate to the nearest whole month the license or renewal fee established pursuant to ~~K.S.A. 65-1645 and amendments thereto~~ this section.

(g) The board may require that fees paid for any examination under the pharmacy act of the state of Kansas be paid directly to the examination service by the person taking the examination.

2007 Session

SENATE WAYS AND MEANS SUBCOMMITTEE

Kansas Public Employees Retirement System Issues
March 28, 2007 Report

Senator Stephen Morris, Chair

Senator Laura Kelly

Senator David Wysong

Senate Ways and Means
3-28-07
Attachment 15

The Subcommittee held hearings on March 6 and 7, 2007, for the three bills noted below. Following deliberations, the Subcommittee considered amendments to each of the bills and makes recommendations for amendments to each bill as noted. The original report was presented to the Senate Ways and Means Committee on March 12, 2007, and the report was adopted. All three bills were recommended favorably and the Senate passed each bill. Because the House has taken no action on any of the three bills as of March 27, 2007, the Subcommittee recommends that the following provisions of each bill be amended into HB 2457 and that the Senate Substitute for HB 2457 be passed. The bills would include:

SB 180 would ensure that lump sum distributions shall retain their state tax exempt status after being rolled over into qualified retirement accounts. The Subcommittee believes the intent of the original legislation authorizing partial lump sum distributions was for the distributions to be exempt from state taxes.

Amendments are recommended to remove reference to the Board of Regents Retirement Plan from the bill, and to leave reference in the bill to the Kansas Public Employees Retirement Plan, the Kansas Police and Fireman's Retirement Plan, and the Retirement Plan for Judges which are part of the Kansas Public Employees Retirement System. The Subcommittee notes the original partial lump sum legislation on addressed KPERS distributions and not Regents.

SB 335 would prohibit the investment of funds by the Kansas Public Employees Retirement System in certain companies with business operations in Sudan. The Subcommittee endorses the policy of divestment and recommends this legislation to direct such actions by the KPERS Board of Trustees.

Amendments are recommended to provide for divestment from direct and indirect holdings in companies with such operations, except in the case of passively managed commingled funds when the estimate costs of divestment exceeds a threshold test. The Subcommittee believes that in at least one instance the costs of divestment would be detrimental to the Trust Fund and that exceptions should be allowed in such cases where justified. Periodic reports to the Joint Committee on Pensions, Investments and Benefits will be require if exceptions to divestment are approved by the Board of Trustees.

SB 371 would allow purchase of service credit by certain members of the Kansas Public Employees Retirement System for breaks in service due to serving in peace-keeping missions of the United Nations. The Subcommittee feels that this purchase at full actuarial cost to the individuals would be good public policy and consistent with other service credit purchases previously authorized by the Legislature.

Amendments are recommended to allow certain members of the Kansas Police and Fireman's (KP&F) Retirement System with 21 or more years of service, who are disabled and who have children, to have retirement benefits calculated in the same manner as disabled members without children. The Subcommittee believes this is an issue of equity and should be addressed in an affirmative manner by legislation.