

Approved: 4/1/09
Date

MINUTES OF THE SENATE PUBLIC HEALTH AND WELFARE COMMITTEE

The meeting was called to order by Chairman Jim Barnett at 1:30 p.m. on February 25, 2009, in Room 136-N of the Capitol.

All members were present except Senator Wysong who was excused, and Senator Haley who was absent.

Committee staff present:

Nobuko Folmsbee, Office of the Revisor of Statutes
Doug Taylor, Office of the Revisor of Statutes
Kelly Navinsky-Wenzl, Kansas Legislative Research Department
Terri Weber, Kansas Legislative Research Department
Jan Lunn, Committee Assistant

Conferees appearing before the committee:

Don Brada, MD, Wichita Graduate Medical Education Program
Susan Kang, Kansas Department of Health and Environment
Larrie Ann Lower, Medco
Doug Mays, MethShield
Ron Hein, Kansas Pharmacy Coalition and Kansas Pharmacists Association
Sandy Horton, Crawford County Sheriff

Others attending:

See attached list:

Susan Kang distributed a response to questions raised at the hearing on February 17, 2009, for **SB 147 - Department of health and environment; HIV screening for pregnant women and newborn children; rules and regulations**. Ms. Kang indicated the HIV-AIDS Prevention grant will fund HIV testing for approximately 4,400 uninsured women and newborn testing kits (Attachment 1). Estimated costs total \$17,200 annually. Test kits have a shelf life of approximately two years.

Ms. Folmsbee presented an additional balloon which would amend **SB 147** by removing the reference to an "obstetric panel" and "all pregnant women in Kansas" and by adding language to clarify that a pregnant woman has the right to refuse the HIV screening at any time. Additionally, it was requested that a date certain for the adoption of rules and regulations be inserted by requiring that the rules and regulations be adopted within one year of the effective date of the act.

Senator Brungardt offered a substitute motion to amend **SB 147** as discussed and to report the bill favorably for passage; Senator Kelsey seconded the motion. The motion carried.

Senator Barnett introduced Dr. Brada, chief medical officer for the Wichita Center for Graduate Medical Education Program (WCGME). Dr. Brada provided a description of the WCGME program consisting of 272 residents in 14 physician residency programs (Attachment 2). WCGME has existed for 20 years and provides the necessary graduate medical education programs for physicians. Dr. Brada discussed the accreditation status and cycle length of various programs. He indicated of the 353 graduates between 2004 and 2008, 174 are practicing in Kansas. Dr. Brada reviewed resident practice locations and provided a map showing the location of graduates in underserved areas. Additionally, funding components and rationale for the program was discussed. Dr. Brada concluded that \$6.5 million dollars is the total amount necessary for the current physician residency programs to remain strong and intact in the three-member WCGMC consortia (University of Kansas Medical Center - Wichita, Via Christi, and Wesley - Wichita hospitals)

Senator Schmidt inquired about the possibility of residents and staff physicians becoming state employees and the impact of such a plan. Dr. Brada indicated that although such a plan assumes savings, there could be unrecognized financial consequences of shifting employees to the state payroll. The plan is being considered.

Senator Barnett thanked Dr. Brada for his presentation, and the work continuing with physicians in Wichita.

CONTINUATION SHEET

Minutes of the Senate Public Health And Welfare Committee at 1:30 p.m. on February 25, 2009, in Room 136-N of the Capitol.

Chairman Barnett re-opened the hearing and discussion on **SB 248 - Electronic logging system for sale of methamphetamine precursor** by recognizing Doug Mays. Mr. Mays supported this legislation citing two pilot programs had been conducted successfully. In addition, he reported all stakeholders had been meeting to compromise on amendment language (Attachment 3).

Senator Pilcher-Cook inquired what potential costs of hardware and software for an electronic system might be. Mr. Mays reported approximately \$300,000 in start-up costs would be expended for the hardware component. Software, internet connections, etc., would account for additional expenses.

Ms. Larrie Ann Lower, representing Medco Health Solutions, indicated any concerns previously submitted have been resolved. However, her testimony (Attachment 4) is attached for inclusion in the permanent record.

Mr. Ron Hein, Kansas Pharmacy Coalition and Kansas Pharmacists Association, indicated committee members could disregard his submitted testimony (Attachment 5). Mr. Hein reported that previous concerns have been abated, and a final resolution to any concern could be crafted with an additional meeting among interested parties.

Chairman Barnett called attention to written testimony submitted by Ron Gaches, representing the Kansas Independent Pharmacy Service Corporation (Attachment 6), encouraging the same standard relative to "real time" submission of records into an electronic system be applied uniformly to all retail pharmacies.

Sheriff Sandy Horton encourage committee members to favorably move the bill forward.

Chairman Barnett asked Kelly Navinsky-Wenzel, legislative research department, to provide information on electronic log books in other states. Ms. Navinsky-Wenzel provided testimony (Attachment 7) regarding start-up and on-going funding for electronic systems in Kentucky, Oklahoma, and Arkansas. In addition, funding sources and other pertinent information was provided.

Discussion ensued relative to the submitted fiscal note, clean-up costs, and law enforcement costs. Senators attending the meeting requested a revised fiscal note. Senator Barnett indicated final action on **SB 248 - Electronic logging system for sale of methamphetamine precursor** would be noticed in the Senate Calendar.

The meeting was adjourned at 2:26pm

The next meeting is scheduled for February 26, 2009.

SENATE PUBLIC HEALTH AND WELFARE COMMITTEE GUEST LIST

DATE: February 25, 2009

NAME	REPRESENTING
Jan Morin	KS Medical Society
Kari Presley	Kearney & Associates Inc.
Heather Snook	Student
Melisey Mepok	Student
Jane Jones	UHG
Ann P. Botterley	Botterley & Assoc
Kent Fulton	Christian Science Comm. de Publication
Susan Kany	KDHE
Dick Morrissey	
BRENDA E. Walker	KDHE
L. William Lyons	
Barbara Huske	KDHE
Holly Smith	Kansas Liberty
Jeff Cimron	KU
Sum Zalesky	JAG
Sandy Hottel	Crawford Co. Sheriff / Kansas Sheriff Assoc.
RON HATFIELD	APPRISS INC.
Chad Austin	KHA
Bob Williams	KS Assoc. Osteopathic Medicine

**Cost of implementing the
HIV Perinatal Safety Net Program
February 20, 2009**

With the successfully passage of SB 147, The Perinatal Prevention Act, the Kansas AIDS Program Office, Bureau of Disease and Prevention, Kansas Department of Health and Environment will implement an 'HIV Perinatal Safety Net Program'. This program is structured to provide service to those clients who have not been previously tested and have no health care coverage. It is estimated that 89% of pregnant women are currently being tested and paid for by their insurance provider because HIV Prenatal testing is a national standard of care. This program will ensure that the estimated 11% of the annual 40,000 women who give birth in Kansas that are currently not being tested will be tested for HIV. This program will be paid for by The Kansas HIV-AIDS Program Office.

State programs such as WIC, Maternal and Child Health, Federally Qualified Health Centers and Community Health Centers will have the ability to refer uninsured clients to the nearest KDHE sponsored Counseling and Testing site for HIV testing.

In order to ensure that birthing centers have the ability to test newborns within 12 hours whose mothers HIV status is unknown; rapid test kits will be provided. All 78 birthing centers in Kansas can receive, if requested, up to 5 rapid tests kits per year free of charge. These tests kits are to be used to test newborn infants at the time of delivery whose mothers HIV status is unknown.

Estimated costs for testing are:

Up to 4,400 women screened x \$3 processing fee = **\$13,200**

Rapid Tests kits for 78 birthing centers x 5 kits = 390 kits x \$10 = **\$3,900**

Costs	First trimester	Rapid test kits	Totals per year
Estimated Costs	\$13,200	\$3,900	\$17,100

The HIV-AIDS Prevention grant will pay for the tests for the mother and the kits for the birthing centers (\$17,100).



1010 N. Kansas

Wichita, KS 67214-3199

Wichita Center for Graduate Medical Education (WCGME) Fact Sheet

WCGME is a public-private consortium consisting of three entities: The University of Kansas School of Medicine – Wichita (KUSM-Wichita), Via Christi Regional Medical Center and Wesley Medical Center. WCGME has been in existence for 20 years and it provides the necessary graduate medical education programs which allow physicians to practice medicine.

- WCGME has 272 residents in 14 physician residency programs.
- In the past five-year period, 55% of WCGME graduates continue to practice in Kansas. The national average is 45% of physicians who practice in the state in which they are trained, so our retention rate is well above the national average.
- Resident physicians trained through the current WCGME programs are practicing in 70 of the 105 counties in Kansas.
- The two largest hospitals in Kansas are Via Christi Regional Medical Center and Wesley Medical Center. They are two of the three Level One Trauma Centers in the State, and 46% of the trauma patients who receive treatment there come from outside of Sedgwick County.
- All of the residencies of WCGME are major providers of medical care to the uninsured and Medicaid population. Many of these patients served, come from outside the Sedgwick County area.
- WCGME has the 2nd largest Family Medicine residency in the nation. The four Family Medicine Residency Programs in Wichita and Salina have a combined total of more than 90 residents.
- Wesley Medical Center in Wichita has the only Pediatric Emergency Department in the State of Kansas.

(over)

- World-renowned orthopaedic researcher Paul H. Wooley, Ph.D, joined Via Christi and WSU and is conducting research on composite materials used in aviation for orthopaedic use.
- WCGME's Family Medicine Sports Medicine Fellowship at Via Christi is the only one in Kansas.
- WCGME's Family Medicine Residency Program at Via Christi is accredited by both the ACGME and AOA, resulting in more primary care physicians for Kansas.
- KUSM-Wichita is one of only eight medical school-based National Board of Medical Examiners testing centers in the US, and it is the only one in the Midwest.
- When sought after or recruited, WCGME residents are accepted into very competitive fellowships and often return to Kansas to practice in the subspecialty in which they received training.
- Wesley delivers more babies than any other hospital in a 13-state area - 6,257 in 2007, as compared to 1,300 at KU-Kansas City. Currently, 54% of the admissions to Wesley's Neonatology Intensive Care Unit come from outside of Sedgwick County.
- The majority of the 1000-plus physicians in Sedgwick County are volunteer faculty and they assist in teaching WCGME residents.
- Via Christi and Wesley have maintained and supported residency training programs in Kansas for more than 60 years.

WCGME UPDATE

February 25, 2009



WCGME PROGRAMS ACCREDITATION STATUS



ACCREDITATION CYCLE

ACGME Accredited Program	ACGME Accreditation Status	Approximate Date of Next Site Visit	Cycle Length (years)
Anesthesiology	Continued Accreditation	10/1/2011	4
Family Medicine Salina	Continued Accreditation	5/1/2009	3
Family Medicine Via Christi	Continued Accreditation	1/1/2011	3
Family Medicine Via Christi Osteopathic	Continuing Approval	8/18/2013	5
Family Medicine Wesley	Continued Accreditation	2/11/2009 *	5
Sports Medicine	Continued Accreditation	5/1/2010	4

ACCREDITATION CYCLE

ACGME Accredited Program	ACGME Accreditation Status	Approximate Date of Next Site Visit	Cycle Length (years)
Internal Medicine	Continued Accreditation	5/1/2012	5
Internal Medicine/Pediatrics	Accreditation	2/12/2009 *	2
Obstetrics/Gynecology	Continued Accreditation	1/1/2012	4
Orthopaedic Surgery	Continued Accreditation	2/1/2009	5
Pediatrics	Continued Accreditation	4/1/2010	2
Psychiatry	Continued Accreditation	4/1/2011	5
Radiology (Diagnostic)	Continued Accreditation	2/10/2009 *	5
Surgery	Continued Accreditation	6/1/2010	4

WCGME PROGRAMS EVER ON PROBATION

None

WCGME RESIDENT ORIGINS

WCGME RESIDENTS

KUSOM – Wichita	34%
KUSOM – Kansas City	6%
Outside of Kansas	60%

WCGME GRADUATES

Graduates between 2004 - 2008

Total WCGME graduates	353
Currently in fellowships	19
Currently in practice	334

WCGME GRADUATES

Of the 334 graduates in practice:

174 are practicing in Kansas – 52%

PRIMARY CARE RESIDENT GRADUATES

2004 - 2008

Graduating Primary Care Residents	211
<i>Includes Family Medicine/Internal Medicine/Med Peds/Pediatrics</i>	
Practicing in the State of Kansas	<u>154</u>
	73%

RESIDENT PRACTICE LOCATIONS 2004-2008

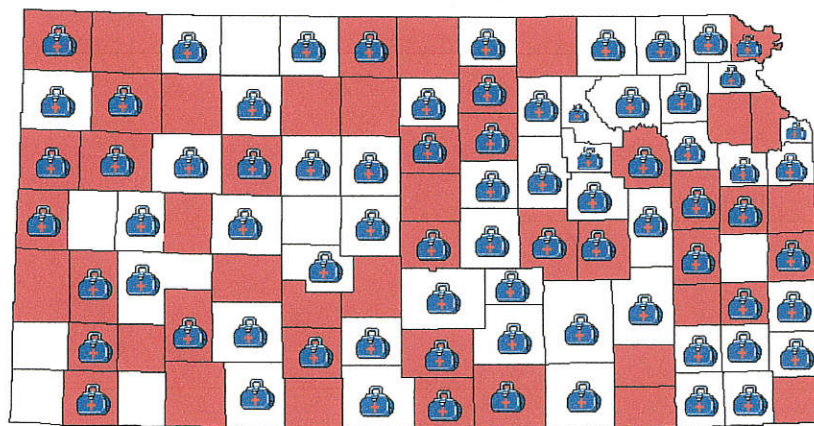
Atchison – 2	Douglas – 1
Barton – 4	Ellis – 4
Bourbon – 1	Finney – 1
Butler – 4	Geary – 1
Cheyenne – 1	Gove – 1
Clark – 1	Harvey – 6
Clay – 1	Jackson – 1
Coffey – 2	Johnson – 5
Cowley – 1	Lyon – 1
Crawford – 3	McPherson – 1

Oct. 2008 Data

RESIDENT PRACTICE LOCATIONS 2004-2008

Nemaha – 2	Shawnee – 3
Neosho – 2	Smith – 1
Pawnee – 2	Stevens – 1
Pratt – 2	Sumner – 3
Reno – 3	Wichita – 1
Republic – 3	Wyandotte – 5
Riley – 3	
Russell – 1	Counties = 36
Saline – 9	
Sedgwick – 91	

Oct. 2008 Data



■ Underserved for primary care (KDHE)
👜 Location of Wichita and Salina graduates



ACCREDITATION CHALLENGES

To maintain accreditation and quality programs in Wichita and Salina, two funding issues must be addressed:

The Accreditation mandates
Reduced Medicare GME funding

ACCREDITATION CHALLENGES

The Accreditation Council for Graduate Medical Education (ACGME) has increased accreditation standards so that protected time for faculty research, teaching and administration is now required.



MANDATED PROTECTED TIME FOR FACULTY

- **Scholarly Activity & Research**
- **Teaching**
 - **Increasing requirements for didactic lectures, journal clubs, specific topics**
- **Administration**
 - **Program Directors**

REDUCTION IN MEDICARE FUNDING

An increase in state funding is needed to replace recently reduced Medicare GME reimbursement:

- **Off-site monthly rotations**
- **Educational leave and non-clinical educational experiences**

FY 09 FUNDING FOR WCGME

- \$2.5M from State of Kansas
- \$2.94M* from Kansas Bioscience Authority

ALLOCATION OF \$2.5M FROM STATE

Held For Possible Rescission	\$ 106,000
Non Medicare Reimbursed Time Resident Salary and Benefits	\$ 1,108,000
Electronic Health Records Family Medicine Clinic	\$ 100,000
Faculty Salary and Benefits	\$ 906,000
Recruitment & Relocation	\$ 250,000
Consultant	\$ 30,000
TOTAL	\$ 2,500,000

**RESULT FROM KBA
INVESTMENT COMMITTEE**

Approved:

\$250,000 strategic planning grant

Recommended:

1st year – full funding - \$2,940,000

2nd year* – 2/3 funding - \$1,958,000

3rd year* – 1/3 funding - \$979,000

***Funding is set aside, but WCGME must re-apply**

Funding Components and Rationale
Wichita Center for Graduate Medical Education (WCGME)

\$2.5 M This amount of funding (which was begun in FY2009 and the request is for it to be sustained in FY2010) would be for accreditation requirements and to recruit and retain faculty for accreditation standards' requirements, including scholarly activities, protected administrative and supervisory time for faculty, and recruitment/retention efforts for primary care physicians for Kansas.

\$1.0 M This amount of funding would be for the salary and benefits for resident physicians who are training at off-site locations and in rural rotations in Kansas. (This cost used to be included in Medicare-funding.)

\$3.0 M This is the amount of funding of the current shortfall of the WCGME programs, due to the reduction and/or limitation of Medicare reimbursement. The two consortia hospitals have temporarily assisted with this revenue shortfall, but they cannot continue that effort. The distribution of the 3 million for clinical teaching and supervision of the primary care residents to the residency clinics in Wichita and Salina will allow the WCGME programs to fill all positions and maintain the WCGME programs at the current level of resident trainees for the 2009-2010 academic year. The funds will be allocated on the basis of the number of half day clinics provided to the primary care resident physicians in training.

\$6.5 M This would be the total amount that is necessary for the current physician residency programs to remain strong and intact in the three-member WCGME consortia, which includes University of Kansas Medical Center-Wichita, Via Christi and Wesley hospitals in Wichita.

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Senate Bill 248
Senate Committee on Public Health

February 17, 2009

Testimony of M. Douglas Mays
On Behalf of Methshield

Meth is cheap, potent and available everywhere. During the past decade, meth use across America has increased by as much as 300 percent. Kansas is no exception.

Federal, and state laws regulate the sale of pseudoephedrine, a chemical commonly found in cold medicines, which is a necessary ingredient in the production of meth. Kansas law requires that these products be placed behind the pharmacy counter, and individuals purchasing these products must present a photo ID and sign a logbook. The intent is to allow legitimate consumers access to the medicine their family needs, while keeping pseudoephedrine out of the hands of meth “cooks.”

The written logbook system to track pseudoephedrine sales that is now in place in Kansas initially worked well as a deterrent. The low-tech paper system has, however, proved cumbersome for law enforcement, and prevents meaningful sharing of real time information between pharmacists, retailers, and authorities. The written logs do nothing to catch meth “cooks” in the act of purchasing illegal quantities of pseudoephedrine – allowing them to continue selling their drugs in our communities. The bad guys have adapted their methods to take advantage of the present log book system by simply going from pharmacy to pharmacy making small PSE purchases that individually would not constitute a violation of Kansas law.

In order to correct this problem, several states have adopted, or are considering adopting electronic logbooks to provide law enforcement real time reporting of illegal pseudoephedrine purchases.

A real time, web based tool will enable pharmacists, retailers, and law enforcement to track the sales of products containing pseudoephedrine. The online system instantly alerts law enforcement if an individual is attempting to make an illegal purchase, allowing them to catch the potential meth “cook” or his runners in the act. In addition, such a system will allow cross-border cooperation between jurisdictions. Electronic logging of pseudoephedrine sales has been highly effective where deployed.

I urge the Committee to pass SB 248.

Public Health and Welfare
Date:
Attachment:

02/25/09
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Testimony before the Senate Public Health and Welfare Committee
SB 248
Medco Health Solutions, Inc.
February 17, 2009

Mister Chairman and members of the Committee. Thank you for allowing me to submit testimony today opposing SB 248. I am here today representing Medco Health Solutions, Inc.

Medco Health Solutions, Inc is one of the nation's leading pharmacy benefit managers. Medco's prescription drug benefit programs, covering approximately one-in-five Americans, are designed to bring down the cost of pharmacy health care for private and public employers, health plans, labor unions and government agencies of all sizes, for individuals served by the Medicare Part D Prescription Drug Program and those served by Medco's specialty pharmacy segment, Accredo Health Group. Medco is the highest-ranked independent pharmacy benefit manager (PBM) on the 2008 Fortune 100 list. You can learn more about us on the net: www.medcohealth.com

SB 248 requires pharmacies to maintain an electronic precursor recording log documenting the sale of methamphetamine precursors. It also requires pharmacies to submit to the State Board of Pharmacy the electronic precursor recording log and provides for penalties for pharmacies that fail to submit logs to the Board. It also prohibits the Board from imposing any charges for the establishment and maintenance of the recording of methamphetamine precursors or for the transmission of data to the program database.

Medco supports the general concept of this legislation, however we have several concerns with the specific requirements included in SB 248. As a PBM, there are currently several checks and balances in place to help monitor abuse of methamphetamine precursors. Most importantly Medco only dispenses such products with a valid prescription. We do not dispense these substances "over the counter." This limitation enables a PBM to monitor usage through the health plan, the plan's formulary and the basic requirement of a prescription before the order is filled by the PBM. Creating an electronic log would be repetitive, extremely burdensome and expensive to administer. In addition, because our service is by mail, PBM's have no way of tracking or communicating an electronic signature from a consumer. Due to the above reasons Medco respectfully request the committee amend the bill in New Sec 2 line 38, by adding the phrase:

"except in instances where a valid prescription is presented for the product."

Thank you for your consideration and I'll be happy to answer any questions you may have.

Public Health and Welfare
Date:
Attachment:

02/25/09
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Ronald R. Hein

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Testimony re: SB 248
Senate Public Health and Welfare Committee
Presented by Ronald R. Hein
on behalf of
Kansas Pharmacy Coalition
February 17, 2009

Mr. Chairman, Members of the Committee:

My name is Ron Hein, and I am legislative counsel for the Kansas Pharmacy Coalition (KPC). The Kansas Pharmacy Coalition is an ad hoc coalition comprised of the Kansas Pharmacists Association and the Kansas Association of Chain Drug Stores.

The KPC opposes SB 248 as it is currently presented. The KPC objections to this legislation are the real time requirement; the possibility that pharmacists would have to stop sales to customers, some of whom might be violent criminals; the potential costs to pharmacy; and what parties will have access to the reported information.

With those statements made, however, KPC is fully appreciative of the goals sought by this legislation, and the intent of reducing meth production in our state. KPC is also appreciative of the very constructive communication we have had with law enforcement and others, and therefore, although we are appearing in opposition, we believe that this bill can be amended in such a way that KPC can support the bill.

The amendments we believe would be necessary are as follows:

- 1) Delete the reference to real time on page 2, line 9, or elsewhere in the bill as applicable, or substitute wording that would exempt pharmacies who cannot comply with the real-time requirement, including chain pharmacies, and/or provide language for pharmacies to submit in a batch format.
- 2) Language should be added to Section 3, on page 2, essentially as follows: "No pharmacy shall be required to incur any cost, for computers, computer software, or otherwise, as a consequence of compliance with this act."
- 3) Language essentially as follows: Nothing in this act shall be construed to require a pharmacist, pharmacy, or pharmacy employee to refuse to sell any product to any customer of such pharmacy at any time."

Public Health and Welfare

Date:

Attachment:

02/25/09

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I have attached draft suggested amendments, and we would offer to work with law enforcement, and this committee to strive to accomplish language which will permit a compromise on this issue.

With the changes identified above, the KPC would withdraw their opposition to SB 248, and would stand in support of the amended legislation.

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

In bill text the following has special meaning

underline denotes added text

~~struck out text~~ denotes deleted text

~~NACDS deletions noted in bold, double strikethrough, highlighted font~~

NACDS additions noted in bold, italic, highlighted font

2009 KS S 248

AUTHOR: Senate Committee on Ways and Means

VERSION: Introduced

VERSION DATE: 02/09/2009

Session of 2009

SENATE BILL No. 248

By Committee on Ways and Means

2-9

AN ACT concerning controlled substances; creating a statewide electronic logging system for sale of methamphetamine precursor; amending K.S.A. 2008 Supp. 65-1643 and repealing the existing section; also repealing K.S.A. 2008 Supp. 65-1643b.

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

New Section 1. As used in this act, unless the context otherwise requires:

(a) "Board" means the state board of pharmacy.

(b) "Methamphetamine precursor" means any compound, mixture or preparation containing pseudoephedrine, ephedrine or phenylpropanolamine, or any of their salts or optical isomers, or salts of optical isomers, but does not include products that have been formulated in such a way as to effectively prevent the conversion of the active ingredient into methamphetamine, or its salts for precursors, and does not include animal feed products containing ephedrine or any naturally occurring or herbal ephedra or extract of ephedra.

(c) "Pharmacy" means premises, laboratory, area or other place, including in-state, **and** out-of-state ~~and internet~~ facilities **that are required to be registered under K.S.A. 65-1643 or K.S.A. 65-1647**; (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

Comment [NACDS1]: Redundant language – 'internet pharmacies' dispensing to Kansas consumers are deemed to be 'out of state pharmacies' under KS statute and must be licensed as nonresident pharmacies under KSA 65-1647.

the characteristic symbols of pharmacy or the characteristic prescription sign "Rx" may be exhibited.

New Sec. 2. (a) The board shall establish and maintain a program for a statewide electronic logging system for sale of methamphetamine precursors.

(b) ***Provided that the cost of establishing and maintaining the statewide electronic logging system are borne by the board, e*** Each pharmacy shall maintain an electronic methamphetamine precursor recording log documenting the sale of methamphetamine precursors. The board shall promulgate rules and regulations specifying a standardized format for the log and the information that each pharmacy shall submit to the board, which shall include, but not be limited to:

(1) The name, **and** address **and signature** of the person purchasing, receiving or otherwise acquiring the methamphetamine precursor;

(2) the name of the product and quantity purchased;

(3) the date and time of the purchase; and

(4) the name, or initials, of the licensed pharmacist, registered pharmacy technician or pharmacy intern or clerk supervised by a licensed pharmacist who sold the product.

(c) Each pharmacy shall submit the information from the log **at the point of sale in real time** in accordance with transmission methods specified in rules and regulations promulgated by the board.

(d) ***A waiver exempting a pharmacy from compliance with the electronic methamphetamine precursor log requirement shall be granted upon showing of imposition of additional cost by the pharmacy.*** The board may **also** issue a waiver to a pharmacy that is **otherwise** unable to submit log information by electronic means. Such waivers may permit the pharmacy to submit log information by paper form or other means, provided that all information required by rules and regulations is submitted in this alternative format.

(e) No pharmacy or pharmacy employee shall be liable to any person in a civil action for damages or other relief arising from a sale of a methamphetamine precursor that occurs at another pharmacy.

New Sec. 3. The board shall not impose any charge for the establishment or maintenance of the program for the recording of methamphetamine precursors on a pharmacy. The board shall not charge any fees for the transmission of data to the program database or for the receipt of information from the database.

New Sec. 4. (a) Methamphetamine precursor recording log information submitted to the board shall be confidential and not a public record and not subject to the Kansas open records act, K.S.A. 45-215 et seq., and amendments thereto, except as provided in subsections (c) and (d).

Comment [NACDS2]: Signature files are large and difficult to transmit. If the BoP or law enforcement would need to see the signature of a particular customer, that could be produced upon demand.

Comment [NACDS3]: We are concerned with creating a system that would track sales in real-time, at the point of sale:

- While real-time sales reporting at the point of sale would give pharmacy employees real-time information about whether a purchaser has reached their legal limit for purchasing affected products, this type of system could be used to require pharmacy employees block sales, thereby becoming enforcers of the law.

- Placing employees in this position jeopardizes both their safety and the safety of customers should they be forced to deny a sale to an addict, dealer or other criminal intent on purchasing products for manufacturing methamphetamine.

- Furthermore, a mistake entered into the log may wrongfully indicate that an innocent purchaser has exceeded the legal limit and may cause the seller to mistakenly refuse to sell PSE products to that purchaser.

- Pharmacy employees do not have the authority, training, or experience to act as law enforcement officials. No law should be enacted that could ultimately result in a member of the public having to (inappropriately) assume this role.

Comment [NACDS4]: Where complying with the log requirement would cause a pharmacy to incur additional costs, there would need to be a mechanism to exempt such pharmacies from having to comply with the electronic log requirement.

(b) The board shall maintain procedures to ensure that the privacy and confidentiality of information collected, recorded, transmitted and maintained is not disclosed to persons except as provided in subsections (c) and (d).

(c) The board shall be authorized to provide data in the log to the following persons:

(1) Any person authorized to prescribe or dispense products containing pseudoephedrine, ephedrine or phenylpropanolamine, for the purpose of providing medical or pharmaceutical care for their to an individual patients;

Comment [NACDS5]: This revision clarifies the scope of what information can be accessed.

(2) local, state and federal law enforcement or prosecutorial officials; and

(3) local, state and federal officials who request access for the purpose of facilitating a product recall necessary for the protection of public health and safety.

(d) The board may provide data to public or private entities for statistical, research or educational purposes after removing information that could be used to identify individual patients or persons who received methamphetamine precursors from pharmacies.

New Sec. 5. (a) The board is hereby authorized to contract with another agency of this state or with a private vendor, as necessary, to ensure the effective implementation and operation of the methamphetamine precursor recording log. The log shall be capable of sending real-time notification to law enforcement officials. Any contractor shall be bound to comply with the provisions regarding confidentiality of log information in section 5, and amendments thereto, and shall be subject to the penalties specified in section 10, and amendments thereto, for unlawful acts.

(b) All information collected for the program database and any records maintained by the board, or by any entity contracting with the board, submitted to, maintained or stored as a part of the database, shall be retained for five years. Such information and records shall then be destroyed unless a law enforcement entity has submitted a written request to the board for retention of specific information or records in accordance with procedures adopted by the board.

(c) The board shall develop and implement a program to educate pharmacies and pharmacy employees about the program for the recording of methamphetamine precursors.

(d) The board shall review the effectiveness of the program for the recording of methamphetamine precursors and submit an annual report to the senate standing committee on public health and welfare and the house standing committee on health and human services.

New Sec. 6. The board shall adopt, within 90 days after the effective date of this act, such rules and regulations the board deems necessary to carry out the provisions of this act.

New Sec. 7. (a) A pharmacy that knowingly fails to submit methamphetamine precursor recording log information to the board as required by this act or knowingly submits incorrect log information shall be guilty of a severity level 10, nonperson felony.

(b) A person authorized to have log information pursuant to this act who knowingly discloses such information in violation of this act shall be guilty of a severity level 10, nonperson felony.

(c) A person authorized to have log information pursuant to this act who knowingly uses such information in a manner or for a propose in violation of this act shall be guilty of a severity level 10, nonperson felony.

Sec. 8. K.S.A. 2008 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 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 ~~(tt)~~ (dd) 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;

(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 and enters

in the log, or allows the seller to enter in the log, such person's address and the date and time of sale or allows the seller to enter such information into an electronic logging system pursuant to section 3. 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;

(C) the seller determines that the name entered in the log corresponds to the name provided on such identification and that the date and time entered are correct; and

(D) the seller enters in the log the name of the controlled substance and the quantity sold; or

(2) there is a lawful prescription.

(l) For any pharmacy to allow customers to have direct access to any controlled substance designated in subsection (e) or (f) of K.S.A. 65-4113, and amendments thereto. Such controlled substance shall be placed behind the counter or stored in a locked cabinet that is located in an area of the pharmacy to which customers do not have direct access.

(m) A seller who in good faith releases information in a log pursuant to subsection (k) to any law enforcement officer is immune from civil liability for such release unless the release constitutes gross negligence or intentional, wanton or willful misconduct.

(n) 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, 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. 9. K.S.A. 2008 Supp. 65-1643 and 65-1643b are hereby repealed.

Sec. 10. This act shall take effect and be in force from and after its publication in the statute book.



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Testimony of Kansas Independent Pharmacy Service Corporation Regarding SB 248 – Electronic Logging System for Meth Precursors Presented to Senate Public Health and Welfare Committee

By Ron Gaches

Wednesday, February 25, 2009

The Kansas Independent Pharmacy Service Corporation supports passage of Senate Bill 248. KIPSC members have been active participants in the two electronic lobbying systems pilots over the past year with good results. KIPSC members have confidence in the systems and agree with law enforcement officials that this step is an important component of a comprehensive program to discourage illegal methamphetamine production in Kansas.

We have two concerns for your consideration as you discuss the final markup of the bill.

First, we strongly believe the financial burden for this program should fall on the State of Kansas and not retail pharmacists. Although the bill indicates that pharmacists would not bear any direct costs associated with the program, we are concerned about language that places the program under the administration of the State Board of Pharmacy without identifying a funding source. Board of Pharmacy funds come exclusively from licensee fees. We are concerned that the current language in the bill does not provide retail pharmacists with sufficient protection from being asked to pay indirectly for implementation of this program.

Second, there have been significant discussions outside of committee about the relative merits and difficulty of implementing the logging program and the practicality of “real time” submission of records into the system. Whatever the outcome of that discussion, we believe it is important that independent pharmacies and chain pharmacies be held to the same standard. KIPSC will oppose a two-tier system that places different levels of compliance on independent pharmacies as compared to chain pharmacies. Whatever the standards of compliance shall be, they should apply uniformly to all retail pharmacies.

Thank you for your consideration of our concerns. Ron Gaches is available to respond to any questions or comments you may have about this issue or other issues of concern about community pharmacies.

Public Health and Welfare

Date:

Attachment:

02/25/09

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Electronic Logbooks for Methamphetamine Precursors

	Kentucky	Oklahoma	Arkansas
Department:	Office of Drug Control Policy	Bureau of Narcotics and Dangerous Drugs	Crime Information Center
Initial Funding:	Used \$360,000 from a federal Prescription Monitoring Grant; funding was used to bring different regional areas of the state online and provide development and training.	2002 Federal COPS Pseudoephedrine Tracking Grant for \$500,000; funding was used to develop electronic logging system; no vendor available at the time.	State General Revenue for \$350,000; funding was used for a turn-key contract with a vendor.
Current Funding:	Federal COPS Methamphetamine Technology Grant. Current grant will last until the end of 2009. Seeking another federal grant.	Seeking \$100,000 in state funding for redeveloping electronic logging system. Creation to take between six and nine months.	Seeking \$393,000 from the General Revenue Fund. Funding for the 2010-2011 biennium.
Estimated Yearly Cost:	Between \$400,000 and \$450,000. No cost to pharmacies. Estimated system cost based on a formula that assumed approximately 1,200 pharmacies at an average system cost of \$35 per month.	Approximately \$400,000. No cost to pharmacies.	Approximately \$300,000. No cost to pharmacies.

Public Health and Welfare
Date:
Attachment:

	Kentucky	Oklahoma	Arkansas
Lab Clean Up:	Estimates clean up costs for a lab to be between \$500 and \$2,000 depending on factors such as size.	Did not have an estimate for Oklahoma, but said that the national average to clean up a lab is between \$180,000 and \$300,000.	No estimate provided.
Comments from States:	<p>Are finding more methamphetamine labs in counties that are next to the borders.</p> <p>Are seeing a large black market for pseudoephedrine where young people are getting paid \$50 to \$100 to purchase pseudoephedrine.</p> <p>For the first few months after the system was implemented, two people were needed to answer telephones and provide technical support for pharmacies and customers who were concerned why they were being denied. Now receive about 20 to 25 calls a week (less than a full time employee). Calls mainly for system related issues such as a forgotten password.</p>	<p>With original system, pharmacies had been allowed to enter data every 30 days in a variety of ways such as online or by floppy disks, but changed to a 24 hour entry system because the system was too time consuming and too manpower heavy.</p> <p>Have had people enter wrong identification information or additional information that is not necessary into the system.</p> <p>Are seeing a resurgence in methamphetamine labs because the drugs are coming from across the border.</p>	Biggest benefit of the system is that it prevents people from purchasing drugs by going from store to store.

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