

Approved: February 20, 2012

MINUTES OF THE PUBLIC HEALTH AND WELFARE COMMITTEE

The meeting was called to order by Chairman Vicki Schmidt at 1:30 p.m. on February 2, 2012, in room 546-S of the Capitol.

All members were present.

Committee staff present:

Nobuko Folmsbee, Office of the Revisor of Statutes
Renaë Jefferies, Office of the Revisor of Statutes
Iraida Orr, Kansas Legislative Research Department
Melissa Calderwood, Kansas Legislative Research Department
Carolyn Long, Committee Assistant

Conferees appearing before the Committee:

Debra Billingsley, Executive Director, Board of Pharmacy
Nancy Zogelman, Pfizer
Julie Hein, Kansas Association of Chain Drug Stores

Others attending:

See attached list.

The Chair opened the hearing on **SB 328—Electronic prescription**. Information provided by staff stated that this legislation would amend the Kansas Pharmacy Act to clarify the definition of an “electronic prescription: and provide a clear distinction between “electronic transmissions” and facsimile transmissions.” An electronic prescription is an electronically prepared prescription that is authorized and transmitted from the prescriber to the pharmacy by means of electronic transmission. An electronic transmission is defined as the transmission of an electronic prescription, formatted as an electronic data file, from a practitioner’s electronic prescription application to a pharmacy’s computer, where the data file is imported into the pharmacy prescription application.

The bill would require electronic prescriptions to be retained electronically for five years from the date of their creation or receipt. Paper, oral, and facsimile prescriptions would be required to be maintained as a hard copy for five years at the registered location.

Pharmacist interns would be required to be: enrolled in an accredited pharmacy program; graduate of an accredited pharmacy program serving an internship; or graduate of a pharmacy program located outside the U.S. which is not accredited and who has successfully passed equivalency examinations approved by the Board of Pharmacy.

This bill would also allow electronic transmission of prescriptions for controlled substances with a valid prescription order, based on a valid patient-prescriber relationship. It would be prohibited from being electronically transmitted if the prescription was printed prior to electronic

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transmission. Only a pharmacist, a pharmacist intern, or a certified pharmacy technician would be authorized to receive a new prescription order. The bill would require pharmacists to exercise professional judgment and take adequate measures to guard against the diversion of prescription drugs and controlled substances through prescription forgeries.

The pharmacist would be required to ensure that the prescription order has been issued for a legitimate medical purpose by an authorized prescriber acting in the usual course of the prescriber's professional practice.

The bill would also clarify that a refill is one or more dispensing of a prescription drug or device that results in the patient's receipt of the quantity authorized by the prescriber for a single fill as indicated on the prescription order. No more than 12 refills within 18 months following the date on which a prescription is issued if it is not a controlled substance and no more than five refills within six months following the date on which the prescription is issued for a schedule III, IV, or V controlled substance would be authorized.

The Chair recognized Debra Billingsley, Executive Secretary of the Kansas State Board of Pharmacy. She said the Drug Enforcement Agency (DEA) requirements require prescribing practitioners to have specific software applications, identify proofing, set access controls, and electronic signature capabilities. Pharmacies must have specific software applications, set access controls, processing capabilities and archive prescription capabilities. Both must undergo a third-party audit or certification to determine whether their software application meets DEA requirements. Auditing companies must provide a report of certification to the prescriber and the prescriber must provide these to the pharmacy.

The bill adds new definitions to the existing definitions relating to electronic orders of controlled substances and electronic prescriptions for controlled substances. They added the definition "electronic transmission" from language found in Iowa laws. They expanded the definition of "pharmacy intern" to indicate a pharmacy student, a pharmacy resident, and a foreign pharmacist graduate.

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The bill deletes the majority of K.S.A. 65-1637 on page 11 under Section 2 but restates it on page 13 in new Section 3. In various places the word “practitioner” was changed to “prescriber” so that it would include both practitioners and mid-level practitioners. In the proposed legislation, certified pharmacy technician was deleted on page 14, line 18, because pharmacy technicians cannot accept a new prescription in Kansas.

Electronic prescribing is available now in Kansas but most of the prescribers and pharmacies have not received their certificate by the third party auditor (Attachment #1).

Nancy Zogelman, representing Pfizer, said that they support the Board of Pharmacy’s foundation for electronic prescribing. A survey by the American Medical Association (AMA) stated that streamlining the preauthorization process would eliminate wasted time and expense by physicians and pharmacists having to determine which drugs require preauthorization by insurers. The State of Missouri implemented an electronic prior authorization system over five years ago that reduced the cost of its Medicaid prescription drug program by 9 percent. Mr. Drue Duncan, also with Pfizer, will get more of the specifics concerning the Missouri program to share with the committee. Last year Kansas implemented a similar electronic PA program for Medicaid with savings projected at \$1.5 million per year. The committee was reminded that Missouri’s Medicaid program is three times the size of the Kansas program. Therefore, they would like to introduce an amendment that states “The electronic transmission of prescription orders shall provide the prescriber with the ability to electronically request approval criteria for prior authorizations and step therapy protocols and receive approvals for prior authorizations and step therapy protocols within 48 hours from the time the prescription order to received” (Attachment #2).

Representing the Kansas Association of Chain Drug Stores, Julie J. Hein said there were approximately 315 chain pharmacies operating in the state of Kansas and that her membership supports statutory changes clarifying that electronic prescribing of controlled substances is a legal practice in Kansas. She also indicated they have concerns with language in the bill that would require pharmacists to ensure that prescriptions have been issued for a legitimate medical purpose, wondering how that can be accomplished. For that reason they ask legislators to delete the first sentence from paragraph (f) under the New Section 3 in the bill (Attachment #3).

Larrie Ann Brown, Medco Health Solutions, Inc., expressed concern over the proposed amendment stating that if confirmation must be made with providers or lab tests ordered, the 48 hour turnaround would be next to impossible.

Also expressing concern was Jerry Slaughter, Kansas Medical Society, who stated that the new language in Section 3 could become problematic and they would like time to study it further.

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Also expressing concern over the proposed amendment was Sandy Braden from Gaches, Braden & Associates. She said she would like an opportunity to review the proposed amendment.

The Chair asked that all parties confer and hopefully come back to the Committee with an agreed upon amendment toward the end of next week.

There being no further discussion, the hearing on **SB 328** was closed.

The next meeting of the committee is scheduled for February 6, 2012.

The meeting was adjourned at 2:30 p.m.