

SESSION OF 2011

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2182

As Amended by Senate Committee of the Whole

Brief*

HB 2182, as amended, would enact and amend several health care provisions in Kansas law. Specifically, the bill would:

- Enact the Health Care Freedom Act, which would outline the individual right of Kansas residents to choose to purchase or refuse to purchase health insurance;
- Create the Pharmacy Audit Integrity Act which would define a Pharmacy Benefits Manager (PBM) under the Act, outline the procedures for conducting an audit, and provide for an appeals process;
- Permit mail order pharmacies physically located outside of Kansas, but licensed within the state, to donate unused prescription medication under the Utilization of Unused Medications Act;
- Create the Perfusion Practice Act and would establish a Perfusion Council under the State Board of Healing Arts. This act would establish educational and licensure requirements for perfusionists;
- Add language allowing the Behavioral Sciences Regulatory Board to deny, eliminate, or otherwise restrict the license of an applicant or licensee when a determination of substantiated abuse, neglect or exploitation becomes final;

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

- Make changes in Chapter 45 of the 2010 Session Laws of Kansas (the Addictions Counselor Licensure Act, which becomes effective on July 1, 2011) with regard to definitions, requirements for licensure and continuing education, denial or restriction of licensure, and the scope of this act;
- Create the School Sports Injury Prevention Act and would add provisions governing the participation by student athletes in a Kansas state high school league-sponsored sport or competition while participating in non-school swimming athletic training or diving athletic training, or both;
- Amend the Physical Therapy Practice Act by expanding the allowable professional designations for physical therapists (PT's) and physical therapy assistants (PTA's), including the use of designations of educational degrees, certifications or credentials earned; and
- Create the Kansas Health Information Technology and Exchange Act. The stated purpose of this act would be to harmonize state law with the Health Insurance Portability and Accountability Act of 1996 (HIPAA) privacy rules with respect to individual access to protected health information, safeguarding protected health information, and the use and disclosure of protected health information to facilitate the development and use of health information technology and health information exchange.

A severability clause also was added to the bill (New Section 57).

Health Care Freedom Act (New Section 1)

The bill would enact the Health Care Freedom Act, which would codify the individual right of Kansas residents to choose to purchase or refuse to purchase health insurance. The bill would state the government is prohibited from

interfering with a resident's right to purchase or refuse to purchase the insurance.

The bill would state it is a resident's right to enter into a private contract with health care providers for lawful health care services, and that the government is prohibited from interfering with this right. The bill would allow a person or employer to pay directly for the services and establish a prohibition against penalizing or fining for doing so. Likewise, the bill would allow a health care provider to accept direct payment for lawful health care services and establish a prohibition against penalizing or fining for doing so.

The bill would prohibit any state agency or other state entity from requiring an agreement to participate in Medicare, Medicaid or any other insurance plan, health care system or health information technology or benefit exchange as a condition for the licensure, registration or certification of a health care provider. State agencies and other governmental entities would not be allowed to prohibit participation by a health care provider in a health information organization for either health information technology or benefit exchange based on whether the health care provider participates in Medicare, Medicaid or any other insurance plans or health care systems.

The bill would provide that government is prohibited from enacting a law that would restrict any of the rights detailed in the Act or that would impose a form of punishment for exercising the rights. The bill also states none of the Act's provisions shall render a resident liable for any type of punishment or penalty as a result of the resident's failure to obtain health insurance coverage or participate in any health care system or plan.

The bill would define a number of terms, including "direct payment or pay directly" and "lawful health care services."

Pharmacy Audit Integrity Act (New Sections 2-7)

The Pharmacy Audit Integrity Act would apply to contracts between an auditing entity and a pharmacy entered into, extended or renewed on or after July 1, 2011, and would not apply to audits, reviews or investigations initiated based upon suspected or alleged fraud, willful misrepresentation or abuse.

Definition

The bill would define a PBM as a person, business or other entity that performs pharmacy benefits management and would include a person or other entity acting for a PBM in a contractual or employment relationship in the performance of pharmacy benefits management for a managed care company, not-for-profit hospital or medical service organization, insurance company, third-party payor or health program administered by the State Board of Pharmacy.

Audit Procedures

The bill would require entities conducting pharmacy audits to comply with the following procedures:

- Provide a minimum of seven days' written notice to a pharmacy prior to conducting an on-site initial audit;
- Require audits that involve clinical or professional judgment to be conducted by or done in consultation with a licensed pharmacist;
- Limit the period covered by an audit to two years from the date of claim submission to or adjudication by the entity conducting the audit;
- Allow pharmacies to request an extension of not more than seven days from the date of an originally scheduled on-site audit;

- Permit pharmacies to use the records of a hospital, physician or other authorized practitioner to validate the pharmacy record;
- Allow the use of any legal prescription which complies with the regulations of the State Board of Pharmacy to validate claims for prescriptions, refills or changes in prescriptions;
- Require similarly situated pharmacies to be audited under the same standards and parameters; and
- Require an auditing entity to establish a written appeals process.

Audit Calculations

The bill would require entities conducting an audit to follow these requirements with regard to calculations:

- Overpayment and underpayment amounts would be based on actual amounts and not projections;
- Extrapolation could not be used in calculating recoupments or penalties for audits, unless required by state or federal contracts;
- Auditing company payments could not be based on a percentage of the recovery amount, unless required by contracts; and
- Accrual of interest during the audit period would not be permitted.

Audit Report Timeline and Appeals

The bill would:

- Require delivery of the preliminary audit report to the pharmacy within 60 days after the audit's conclusion;
- Allow a minimum of 30 days following receipt of the preliminary audit for the pharmacy to provide documentation on any audit discrepancies;
- Require delivery of a final audit report to the pharmacy within 120 days after receipt of a preliminary audit report or final appeal, whichever is later;
- Require recoupment of disputed funds or repayment of funds to the entity by the pharmacy, if allowed by contracts, to the extent demonstrated or documented in the pharmacy audit findings, after final internal disposition of the audit including the appeals process;
- Allow for the withholding of future payments to a pharmacy if an identified discrepancy for an individual audit exceeds \$20,000, pending finalization of the audit;
- Protect the confidentiality of audit information, unless disclosure would be required by federal or state law;
- Limit an auditor's access to previous audit reports of a pharmacy to those performed by the same entity;
- Require an auditing entity to provide a copy of the final report, including the disclosure of any money recouped, upon request of the plan sponsor; and
- Allow a pharmacy to provide a copy of the report to the Insurance Commissioner, provided the report does not contain any personally identifiable health information in violation of the provisions of HIPAA.

Donations Under Utilization of Unused Medications Act (Sections 8 and 9)

Mail order pharmacies which are licensed in Kansas, but not physically located in the state, would be allowed to make donations of unused prescription medications under the Utilization of Unused Medications Act. Currently, only mail order pharmacies physically located within the state are allowed to donate medication to be distributed under the Act. This bill also would revise a statute dealing with medication packaging requirements under the Act. The bill would delete the requirement that medications in tamper-evident packaging be hermetically sealed.

Perfusion Practice Act (New Sections 10-26)

The Perfusion Practice Act would define the activities performed by individuals in the practice of perfusion. The Act would become effective upon publication in the statute book (July 1, 2011), unless otherwise noted.

For the purposes of this Act, “perfusion” is defined as “the functions necessary for the support, treatment, measurement, or supplementation of the cardiovascular, circulatory, respiratory systems, or other organs, or a combination of those activities, and to ensure the safe management of physiologic functions by monitoring and analyzing the parameters of the systems under an order and under the supervision of a person licensed to practice medicine and surgery.”

Licensure and Identification Requirements

The Perfusion Practice Act would:

- Require all persons who practice perfusion to be licensed on or after July 1, 2012 (effective on July 1, 2012);

- Allow only those persons licensed under this Act to use the title “perfusionist,” “licensed perfusionist,” or “licensed clinical perfusionist,” or the abbreviations “LP” or “LCP” (effective July 1, 2012);
- Establish filing requirements for the issuance of a license;
- Provide a procedure to issue a temporary license for a maximum of two years;
- Allow reciprocity for persons engaged in the full-time active practice of perfusion in Kansas or outside the state for a period of more than two of the last ten years who meet the requirements for licensure;
- Provide a reinstatement procedure in the case of license revocation;
- Authorize the State Board of Healing Arts to implement rules and regulations regarding requirements for continuing education and permit the Board to request that a licensee submit to a continuing education audit (effective July 1, 2012);
- Require an active licensee to provide the Board with satisfactory evidence of professional liability insurance prior to renewal of a license and allow the Board to require the same during an audit (effective July 1, 2012); and
- Create the designations and requirements of an inactive license and a federally active license (effective July 1, 2012).

Licensure Exemptions (Effective July 1, 2012)

The Act would establish exemptions to the licensure requirements for:

- Persons licensed by another health professional licensing board who meet specific requirements;
- Persons performing autotransfusion or blood conservation techniques under requisite supervision;
- Students enrolled in an accredited perfusion education program which meets specific requirements;
- Health care providers in the United States armed forces, public health services, federal facilities and other military service when acting in the line of duty; and
- Persons assisting in an emergency.

Fee Structure

The Act would:

- Establish statutory limits for fees for perfusionists. Among the fees established, an application for licensure could not exceed \$300; and the fee for renewal of a license could not exceed \$200;
- Require the Board to charge and collect, in advance, fees as established by rules and regulations set by the Board; and
- Instruct the Board to remit money received from fees, charges, or penalties to the State Treasurer who would deposit it in the State Treasury with 20 percent credited to the State General Fund and the balance credited to the Healing Arts Fee Fund.

Perfusion Council

The Act would:

- Establish the Perfusion Council (Council) which would meet at least once each year to assist the Board in carrying out the provisions of this Act;
- Provide for Council membership to include five members, with two members appointed by the Board of Healing Arts and three members appointed by the Governor. Members appointed by the Board would serve at the pleasure of the Board and members appointed by the Governor would serve for four years with initial appointees serving staggered terms;
- Provide for payment of mileage reimbursement from the Healing Arts Fee Fund for Council members attending Council meetings; and
- Set out the advisory duties of the Council.

Discipline of Licensees

The Act would authorize the Board of Healing Arts to take disciplinary action against any licensee by:

- Establishing grounds under which the Board may limit, suspend, or revoke licenses; censure, reprimand, place on probation, fine or sanction a licensee; assess costs incurred by the Board in conducting any proceeding in which the licensee is the unsuccessful party; or deny an application or reinstatement of a license (effective July 1, 2012);
- Providing for administrative proceedings in accordance with provisions of the Kansas Administrative Procedure Act and for a review process in accordance with the Kansas Judicial Review Act (effective July 1, 2012);

- Giving the Board jurisdiction in disciplinary action proceedings for any licensee practicing under this Act;
- Allowing the Board to enter into a binding stipulation with licensees in disciplinary actions;
- Allowing the Board to temporarily suspend or limit the license of any licensee in cases where continuation of practice would endanger public health and safety; and
- Permitting the Board to bring an action for injunction against violations of the Act in the name of the State in a court of competent jurisdiction without regard to whether administrative proceedings have begun before the Board, or whether criminal proceedings have been or may be instituted (effective July 1, 2012).

The Perfusion Practice Act also would prohibit any language of the Act to be construed to require an individual, group, or blanket insurance policy, contract, plan, or agreement for medical services issued after the effective date of the Act to reimburse or indemnify a licensee for services provided as a perfusionist (effective July 1, 2012). After July 1, 2012, any violation of the Act would constitute a class B misdemeanor.

Behavioral Sciences Regulatory Board—Licensure (Section 27)

The bill would authorize the Behavioral Sciences Regulatory Board to determine the status of a license or application, after providing notice and an opportunity to be heard, when allegations of abuse, neglect or exploitation against a child, adult or resident of a care facility have been:

- Substantiated by the Secretary of Social and Rehabilitation Services, the Secretary of Aging or the Secretary of Health and Environment;

- The administrative appeals process has been exhausted; and
- The determination of substantiation becomes final.

Addictions Counselor Licensure Act (Sections 28-33)

Definitions

The bill would:

- Eliminate case management from the scope of “addiction counseling”;
- Expand independent practice, as applied to addiction counseling and licensed clinical addiction counselors, to include not only the diagnosis and treatment of substance abuse disorders but to allow for both independent practice and diagnosis and treatment of substance abuse disorders; and
- Allow a licensed addiction counselor, on and after July 1, 2011, to practice in treatment facilities exempted under KSA 59-29b46(m). (Among the exempted facilities are licensed medical care facilities, licensed adult care homes, community-based alcohol and drug safety action programs, and state institutions at which detoxification services may have been obtained.)

Licensure Requirements

The bill would:

- Provide that applicants for licensure as addiction counselors who hold a Baccalaureate degree in a related field have:
 - Included as part of the related field course work, a minimum number of semester hours of course work in substance abuse disorders, without the

- specific requirement that the course work be in the diagnosis and treatment of substance abuse disorders; or
 - Additional course work in addiction counseling including course work in substance abuse disorders, to be distinguished from practicum;
- Provide applicants seeking licensure as clinical addiction counselors (who are licensed addiction counselors or meet all of the requirements for licensure as addiction counselors) a new option to enable the applicants to meet a part of the licensure requirements. This option would be completion of a Master's degree in a related field and licensure as an addiction counselor;
- Eliminate, as a condition of licensure, that individuals who would be grandfathered in under the Act as licensed addiction counselors have been actively engaged in the practice of addiction counseling in Kansas as registered alcohol and other drug counselors, alcohol and drug credentialed counselors or credentialed alcohol and other drug abuse counselors within three years of the effective date of this act, and instead would require that these individuals be registered in Kansas in those capacities in the same amount of time;
- Eliminate, as a condition of licensure, that individuals who would be grandfathered in under the Act as licensed clinical addiction counselors have been actively engaged in the practice of addiction counseling in Kansas as alcohol and other drug counselors within three years of the effective date of this act, and instead would require registration in Kansas in that capacity in the same amount of time.
- Provide (upon application, payment of fees and completion of applicable continuing education requirements) that individuals credentialed by the Department of Social and Rehabilitation Services (SRS) as alcohol and drug counselors who have been actively

engaged in the practice, supervision or administration of addiction counseling in Kansas for not less than four years; hold a Master's degree in a related field; and whose last registration or credential in Kansas prior to the effective date of this act was not suspended or revoked, be:

- Licensed as clinical addiction counselors;
- Able to engage in the independent practice of addiction counseling; and
- Authorized to diagnose and treat substance use disorders specified in the edition of *The Diagnostic and Statistical Manual of Mental Disorders* of the American Psychiatric Association designated by the Behavioral Sciences Regulatory Board by rules and regulations.

Licensure Requirements—Other Jurisdictions

The bill would provide for the issuance of a license to applicants currently registered, certified or licensed to practice addiction counseling in another jurisdiction if:

- The standards required in that jurisdiction are substantially equivalent to the requirements of the Addictions Counselor Licensure Act and rules and regulations of the Board; or
- The applicant demonstrates compliance with standards adopted by the Board.

Continuing Education

The bill would clarify the continuing education requirements to distinguish between requirements applicable only to clinical addiction counselor applicants, and those applicable to both the clinical addiction counselor applicants and addiction counselor applicants.

Denial or Restriction of Licenses

The bill would remove the hearing requirement prior to Behavioral Sciences Regulatory Board refusal to grant a license to or Board action to suspend, revoke, condition, limit, qualify or restrict any licensure issued under this act and require only the opportunity for a hearing.

Scope

The bill would clarify the scope of the Act so as not to be construed as authorizing the practice or applying to the activities and services of other professions licensed by the Board.

School Athletes

School Sports Injury Prevention Act (New Section 34)

The School Sports Injury Prevention Act would apply to any public or accredited private high school, middle school, or junior high school. The State Board of Education would be required to distribute information regarding the nature of risks of concussion and head injury. Further, the new law would require that a student suffering, or suspected of having suffered, a concussion or head injury be immediately removed from a sport competition or practice. Specific conditions would have to be met before a student would be allowed to return to competition or practice.

The bill would require:

- The State Board of Education, in cooperation with the Kansas State High School Activities Association, to gather information on the nature and risk of concussion and head injury, including the dangers of continuing to play or practice after suffering such an injury, and distribute the information to coaches, school athletes, and parents or guardians of school athletes;

- A concussion and head injury information release form be signed by the athlete and the athlete's parent or guardian and returned to the school prior to participation in any sport competition or practice session. A new signed release form would be required to be returned to the school each school year that a student participates in sports competitions and practice sessions;
- Immediate removal of a school athlete from a sport competition or practice session if a concussion or head injury has been suffered or is suspected;
- Evaluation by a health care provider (defined under the Act as a person licensed to practice medicine and surgery) of any school athlete who has been removed from a sport competition or practice session; and
- Written clearance by the health care provider performing the evaluation prior to return to competition or practice.

The bill would exempt a health care provider who provides a written clearance, and is not an employee of the school district, from liability for civil damages resulting from any act or omission in rendering care, except for acts or omissions which constitute gross negligence or willful or wanton misconduct.

Participation by High School Athletes (Section 35)

The bill would prevent the Kansas State High School Activities Association and its member high schools, and administrators, principals, coaches, teachers and others affiliated with the Association and member high schools from adopting rules or regulations or interpreting existing rules and regulations in such a way as to prohibit a student athlete from training with any Kansas State High School League-sponsored sport or competition while the student is participating in non-school swimming athletic training or diving athletic training, or both, during the high school sport season and throughout the year if:

- The non-school swimming or diving athletic training, or both, is under the jurisdiction of and sanctioned by the national body of the sport, U.S.A. Swimming, Inc., or U.S.A. Diving, Inc.; and
- The student athlete meets the reasonable and ordinary requirements established by the school for participation in the student athlete's high school swimming program or diving program, or both.

**Physical Therapy Practice Act—Amendments
(Sections 36 and 37)**

Licensed Physical Therapists

The bill would:

- Allow licensed PT's to designate or describe themselves as a “doctor of physical therapy,” and use similar abbreviations or words. In written or oral communication, when using the letters or term “Dr.” or “Doctor” in conjunction with a licensed PT's professional practice, the PT must identify oneself as a “physical therapist” or “doctor of physical therapy”;
- Allow licensed PT's to list or use in conjunction with their name any letters, words, abbreviations or other insignia to designate educational degrees, certifications or credentials recognized by the Board of Healing Arts (Board) which the PT has earned; and
- Prohibit the use of the term “doctor of physical therapy” by an individual not licensed as a PT or whose license has been suspended or revoked in any manner.

Physical Therapy Assistants

The bill would allow certified PTA's to list or use in conjunction with their name any letters, words, abbreviations or other insignia to designate educational degrees, certifications or credentials which the PTA has earned.

Kansas Health Information Technology and Exchange Act (New Sections 38 through 56)

This act would take effect upon publication in the *Kansas Register*.

Definitions

Among the applicable definitions in the Act would be the following:

- “Approved HIO” means a health information organization operating in the state which has been approved by the Corporation;
- “Covered entity” means a health care provider, a health care component of a hybrid entity, a health plan or a health care clearinghouse;
- “Health care provider” means a health care provider, as that term is defined by the HIPAA privacy rule, that furnishes health care to individuals in the state; and
- “Health information technology” means an information processing application using computer hardware and software for the storage, retrieval, use and disclosure of health information for communication, decision-making, quality, safety and efficiency of health care. Health information technology includes, but is not limited to: an electronic health record; a personal health record; health information exchange; electronic order entry; and electronic decision support.

Duties of Covered Entity

The bill would require a covered entity to:

- Provide an individual or the individual's personal representative with access to the individual's protected

health information which is maintained by the covered entity in a designated record set in compliance with HIPAA privacy rules; and

- Implement and maintain appropriate administrative, technical and physical safeguards to protect the privacy of protected health information in a manner consistent with HIPAA rules.

Disclosure of Information

A covered entity would be prohibited from the use and disclosure of protected health information, with certain exceptions as follows:

- The use and disclosure is consistent with an authorization that satisfies HIPAA requirements;
- The use and authorization without authorization is permitted under applicable sections of the HIPAA privacy rules; or
- The use and disclosure is as required under 45 C.F.R. 164.502 of the HIPAA privacy rules.

Further, notwithstanding the above conditions, the Act would not permit the disclosure of protected health information by a covered entity to an approved health information organization (HIO) without an authorization which satisfies HIPAA, unless:

- A current participation agreement exists between the covered entity and the approved HIO;
- The disclosure to the approved HIO is done in a manner consistent with the approved HIO's established procedures;
- Prior to disclosure to the approved HIO, the covered entity must provide the individual (whose information is

to be disclosed), or the individual's representative, with notice required under Section 16 of this Act relating to participation agreements; and

- The covered entity restricts disclosure to the approved HIO of any protected health information concerning the individual that is the subject of a written request by the individual, or the personal representative, for reasonable restrictions on disclosure of all or any specified categories of the individual's protected health information, following the covered entity's receipt of the written request.

A covered entity that uses or discloses protected health information in compliance with this section of this act would be immune from any civil or criminal liability or adverse administrative action as a result or related to the disclosure.

Authorization Form

The Act would require that, within six months of the effective date of the Act, the Secretary of the Kansas Department of Health and Environment (KDHE) develop and adopt by rules and regulations a standard authorization form for the use and disclosure of protected health information which meets HIPAA requirements for use and disclosure. A properly completed standard authorization form would be considered valid authorization for the disclosure requested.

Fees for Copies

Under the Act, the covered entity would be allowed to charge fees for furnishing copies of the protected health information record, with the fees established and updated by the Secretary of KDHE. No fees would be charged for disclosures between a covered entity and an approved HIO.

Conflicts with State Law

Any provision of state law contrary to, inconsistent with or more restrictive than the rules set forth in the Act, would be superseded by the rules set out in the Act, except that the Act could not limit or restrict the application and effect of the Kansas statutes regarding peer review, risk management, or the statutory physician-patient privilege. Provisions in state law relating to protected health information in the possession of a state agency would not be superseded by the Act.

Personal Representative Authorization

A person who qualifies as a personal representative would be authorized under the Act to act on behalf of an individual for specific purposes. Among those purposes are: consent to treatment; consent to an autopsy; disposition of decedent's remains; informed consent for research protocol; the individual's exercise of individual rights under HIPAA privacy rule; and the individual's authorization for use or disclosure of protected health information.

Priority List for Personal Representatives

Incapacitated Adult or Deceased Individual

When a personal representative is needed to act on behalf of an incapacitated or deceased individual, the Act would first require reasonable inquiry as to whether a durable power of attorney for health care or a legal guardian has been designated or appointed. If a power of attorney for health care or a legal guardian has not been appointed or designated, or is incompetent or unavailable, the person or entity requiring a personal representative for an individual must make a reasonable inquiry as to the availability of another individual to serve as the personal representative following the priority list set out in the Act.

The Act also would establish the procedures to follow when there are multiple personal representatives at the same level of hierarchy on the priority list, or in the event a person of higher priority to the individual's identified personal representative becomes available and is willing to serve.

A personal representative's authority to act on behalf of an incapacitated adult would end when the individual gains capacity.

Minors

Under the Act, a person who has authority to consent to the provision of health care to a minor would be authorized to act as a personal representative. If no parent or legal guardian of a minor with authority to consent to health care is available (by any means, personally, by telephone or electronically), or is incompetent to provide consent, the person or entity requiring a personal representative for an individual must make a reasonable inquiry as to the availability of another individual to serve as the personal representative following the priority list set out in the Act. When an individual reaches the age of majority or is emancipated, access or exercise of control by a parent or legal guardian would cease.

No civil or criminal liability would be imposed on any person who relied on a personal representative to act on behalf of a minor.

Appealing and Amending Other Laws

The Act would not amend or repeal laws related to the Kansas Durable Power of Attorney Act for Health Care Decisions, the Kansas Natural Death Act, or laws related to do-not-resuscitate directives. A personal representative would not have the power to revoke certain valid advance directives which have been properly executed by an individual, regardless of the individual's subsequent incapacity. The Act

would not alter any existing law regarding the need to obtain consent for provision of health care, informed consent for research protocol or determination of adult impairment, or minor emancipation.

Public Health Purpose for Disclosure

The Act would allow a health care provider to disclose protected health information without authorization to any state agency for any public health purpose permitted or required by law.

Setting of Standards of HIO's

The Kansas Health Information Exchange, Inc. (Corporation) would establish and revise standards for the approval and operation of statewide and regional HIO's operating in the state as approved HIO's. Among these standards would be those needed for satisfaction of certification standards for health information exchanges promulgated by the federal government and adherence to nationally recognized standards for interoperability.

Approval Process

The Corporation would be required by the Act to establish and implement processes for the approval of an HIO, the re-approval of HIO's at appropriate intervals, and for the investigation of reported concerns and complaints regarding approved HIO's and measures to address the deficiencies.

Participation Agreement Requirements

The Corporation also would establish requirements for participation agreements. Among the requirements are procedures to allow a covered entity to disclose protected health information to an approved HIO, to allow the covered entity access to health information from the HIO, and to

establish specifications of the written notice to the individual before disclosure of information. The written notice may be incorporated into the covered entity's notice of privacy practices required under the HIPAA privacy rule. The information required in the written notice is set out in this section of the Act.

HIO Receipt of Financial Support

The Act would require an HIO to be approved to be eligible for financial support from the state, or assistance or support from the state in securing any other source of funding.

HIO Immunity for Use or Disclosure

An approved HIO that uses or discloses protected health information in compliance with rules adopted by the Corporation would be immune from civil or criminal liability or any adverse administrative action resulting from such use or disclosure.

Uniform Electronic Transactions Act

The Act would amend part of the Uniform Electronic Transactions Act to allow the definition of "transaction" to include actions or sets of actions occurring between two or more persons relating to the conduct of health care. With this amendment, transactions among entities and persons covered in the Act would fall under the Uniform Electronic Transactions Act.

Statutes Repealed

The Act would repeal statutes dealing with persons authorized to dispose of decedent's remains, persons allowed to make anatomical gifts, access to health care records, enforcement, rules and regulation authority, and research protocols.

Background

Testimony on the original bill (HB 2182) by the Kansas Association for the Medically Underserved, the Kansas Department of Health and Environment, and the Community Health Center of Southeast Kansas supported the bill at the House Committee hearing. The Utilization of Unused Medications Act was created to allow safety net clinics around the state to receive unused medication donated by adult care homes, mail order pharmacies and other medical care facilities. However, current law prevents mail order pharmacies located outside Kansas from donating to these clinics, thus reducing the variety and amount of prescription medications available to safety net clinics. There was no opponent testimony.

The House Committee on Health and Human Services amended HB 2182 to revise the medical packaging requirements of the Act. Currently, acceptable medications must be either in single dose packaging, or hermetically sealed by a pharmacy in tamper-evident packaging. The Committee modified the second option to eliminate the reference to hermetically sealed packaging, leaving only the language regarding tamper evident packaging. The process of hermetically sealing is the process used by the current Kansas mail order pharmacy. However, testimony by a representative of the Kansas Association for the Medically Underserved indicated that there are other acceptable practices to insure that the medications have not been tampered with or otherwise compromised, and recommended striking the language relating to hermetical sealing. The Committee adopted this amendment.

The Senate Committee of the Whole amended HB 2182 by inserting the following: the Health Care Freedom Act; Pharmacy Audit Integrity Act (Sub. for SB 138, as recommended by the Senate Committee on Public Health and Welfare); Perfusion Practice Act (SB 5, as amended by the Senate Committee on Public Health and Welfare); Behavioral Sciences Regulatory Board laws, with regard to

changes to licensure (SB 90, as amended by the Senate Committee of the Whole); changes to the Addiction Counselors Licensure Act (SB 100, as amended by the Senate Committee on Public Health and Welfare); School Athletes bill (Sub. for SB 33, as amended by the Senate Committee of the Whole); changes to the Physical Therapy Licensure Act (SB 76, as amended by the Senate Committee on Public Health and Welfare); and Kansas Health Information Technology and Exchange Act (SB 133, as recommended by the Senate Committee on Public Health and Welfare).

The fiscal note on the HB 2182 (as introduced) indicated no fiscal effect on the operations of the Board of Pharmacy.

The fiscal note for SB 138 (as introduced) prepared by the Division of the Budget states that the Board of Pharmacy indicated the bill would have no fiscal effect on state revenues or expenditures.

The fiscal note for SB 5 (as introduced) prepared by the Division of the Budget states that implementation of the bill would cost approximately \$23,500 from the Healing Arts Fee Fund in FY 2012 in preparation of the new duties to begin in FY 2013. The State Board of Healing Arts estimated 50 new licenses would be issued in the first year at a fee of \$80 per application, for total revenue of \$4,000 to the Healing Arts Fee Fund in FY 2013, and similar renewal numbers are anticipated in future fiscal years. Any fiscal effect resulting from the passage of the bill is not included in *The FY 2012 Governor's Budget Report*. The bill, as amended by the Senate Public Health and Welfare Committee, would increase the renewal fees over those established in the original bill and remove the fee for licensure reinstatement due to late renewal. The original fiscal note does not reflect these changes.

The fiscal note for SB 90 (as introduced) prepared by the Division of the Budget states that the Behavioral Sciences

Regulatory Board indicated the bill would have no fiscal effect on state revenues or expenditures.

The fiscal note for SB 100 (as introduced) prepared by the Division of the Budget states that the Behavioral Sciences Regulatory Board estimated the bill would increase state revenue in FY 2012 by \$75,000, of which \$15,000 would be credited to the State General Fund and \$60,000 would be credited to the Board. The increase in revenue is attributable to the addition of an estimated 1,000 addiction counselor licensees and a \$75 licensing fee. No additional expenditures would be required. Any fiscal effect resulting from enactment of the bill is not accounted for in *The FY 2012 Governor's Budget Report*.

The fiscal note for SB 33 (as introduced) prepared by the Division of the Budget states that the Department of Education indicated the bill would have a negligible fiscal effect.

The fiscal note for SB 76 (as introduced) prepared by the Division of the Budget states the Board of Healing Arts indicates the passage of the bill could have a fiscal effect on the agency. Reports or complaints of practitioners who are not complying with the bill also could increase the number of investigations that would need to be performed by Board staff and also could increase the number of disciplinary hearings conducted by the Board. An estimate of the increase in investigations and disciplinary hearings that would result from implementation of this bill cannot be made. A precise fiscal effect cannot be determined. The Board of Healing Arts states that if investigations and caseloads do not increase substantially, the bill could be implemented within existing resources. Any fiscal effect associated with the bill is not reflected in *The FY 2012 Governor's Budget Report*.

The fiscal note for SB 133 (as introduced) prepared by the Division of the Budget states that passage of the bill would have no fiscal effect on the Insurance Department, the Health Policy Authority or the Kansas Department of Health and Environment.