

SESSION OF 2017

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2217

As Amended by House Committee on Health
and Human Services

Brief*

HB 2217, as amended, would enact new law and amend the Kansas Pharmacy Act (Act) to create standards governing the use and administration of emergency opioid antagonists approved by the U.S. Food and Drug Administration (FDA) to inhibit the effects of opioids and for the treatment of an opioid overdose. The bill would require the Board of Pharmacy to issue a statewide opioid antagonist protocol, define applicable terms, establish educational requirements for the use of opioid antagonists, and provide protection from civil and criminal liability for individuals acting in good faith and with reasonable care in administering an opioid antagonist. The Board of Pharmacy would be required to adopt rules and regulations necessary to implement the provisions of the bill prior to January 1, 2018. Additional bill details follow.

Definitions

The bill would define the following terms:

- “Bystander” to mean a family member, friend, caregiver, or other person in a position to assist a person who they believe to be experiencing an opioid overdose;
- “Emergency opioid antagonist” to mean any drug that inhibits the effects of opioids and is approved by the FDA for the treatment of an opioid overdose;

*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>

- “First responder” to include any attendant (as defined in the Emergency Medical Services Act), any law enforcement officer (as defined in the Kansas Code of Criminal Procedure), and any actual regular or volunteer member of any organized fire department;
- “First responder agency” would include, but not be limited to, any law enforcement agency, fire department, or criminal forensic laboratory of any city, county, or the State;
- “Opioid antagonist protocol” to mean the protocol established by the Board of Pharmacy pursuant to the bill;
- “Opioid overdose” to mean an acute condition including, but not limited to, extreme physical illness, decreased level of consciousness, respiratory depression, coma, mania, or death resulting from the consumption or use of an opioid or another substance with which an opioid was combined, or that a layperson would reasonably believe to be resulting from the consumption or use of an opioid or another substance with which an opioid was combined, and for which medical assistance is required;
- “Patient” to mean a person believed to be at risk of experiencing an opioid overdose;
- “School nurse” to mean a professional nurse licensed by the Board of Nursing and employed by a school district to perform nursing procedures in a school setting; and
- “Healthcare provider” to mean a physician licensed to practice medicine and surgery by the State Board of Healing Arts, a licensed dentist, a mid-

level practitioner as defined in the Act, or any person authorized by law to prescribe medication.

Statewide Opioid Antagonist Protocol

The Board of Pharmacy would be required to issue a statewide opioid antagonist protocol establishing the requirements for a licensed pharmacist to dispense emergency opioid antagonists. The protocol would be required to include procedures to ensure accurate record-keeping and education of the person being furnished the emergency opioid antagonist. The education would include, but not be limited to: opioid overdose prevention, recognition, and response; safe administration of an emergency opioid antagonist; potential side effects or adverse events that may occur as a result of administering an emergency opioid antagonist; a requirement that the administering person immediately contact emergency medical services for a patient; and the availability of drug treatment programs.

Pharmacist Duties

A pharmacist would be allowed to furnish an emergency opioid antagonist to a patient or bystander subject to the bill requirements, the Act, and any rules and regulations adopted by the Board of Pharmacy. In furnishing an emergency opioid antagonist, a pharmacist would not be allowed to permit a person being furnished such antagonist from waiving any consultation required by the bill or any rules and regulations adopted by the Board of Pharmacy.

Training Requirements

First responders, scientists or technicians operating under a first responder agency, or school nurses would be authorized to possess, store, and administer emergency opioid antagonists as clinically indicated, provided all

personnel with access to such antagonists receive at least the following minimum training:

- Techniques to recognize signs of an opioid overdose;
- Standards and procedures to store and administer an emergency opioid antagonist;
- Emergency follow-up procedures, including the requirement to summon emergency ambulance services either immediately before or immediately after administering an emergency opioid antagonist to a patient; and
- Inventory requirements and reporting any administration of an emergency opioid antagonist to a health care provider.

First Responder Agency Procedures

A first responder agency electing to provide an emergency opioid antagonist to its employees or volunteers for the purpose of administering such antagonist would be required to procure the services of a physician to serve as a physician medical director for the first responder agency's emergency opioid antagonist program. The physician medical director would be used to obtain a supply of emergency opioid antagonists, receive assistance developing necessary policies and procedures that comply with the bill and any rules and regulations, train personnel, and coordinate agency activities with local emergency ambulance services and medical directors to provide quality assurance activities.

Liability Protection

The bill would provide protection from liability as follows:

- Any healthcare provider or pharmacist who prescribes or dispenses an emergency opioid antagonist in good faith and with reasonable care in accordance with the bill would not, by an act or omission, be subject to civil liability, criminal prosecution, or any disciplinary or other adverse action by a professional licensure entity;
- Any patient, bystander, or school nurse, or a first responder, scientist or technician operating under a first responder agency, who receives and administers an emergency opioid antagonist in good faith and with reasonable care pursuant to the bill to a person experiencing a suspected opioid overdose would not, by an act or omission, be subject to civil liability or criminal prosecution unless personal injury results due to gross negligence or willful or wanton misconduct in administering the antagonist; and
- Any first responder agency employing or contracting any person who administers an emergency opioid antagonist in good faith and with reasonable care pursuant to the bill to a person experiencing a suspected opioid overdose would not, by an act or omission, be subject to civil liability, criminal prosecution, or any disciplinary or other adverse action by a professional licensure entity or any professional review.

Background

The bill was introduced by the House Committee on Health and Human Services at the request of Representative Lakin. In the House Committee hearing, representatives of the Johnson County Emergency Medical Services System, the Board of Pharmacy, the Kansas Bureau of Investigation (KBI), the Kansas Medical Society, the Kansas Pharmacists Association, and the Mid-America Regional Council

Emergency Rescue testified in support of the bill. The proponents generally stated the benefits of establishing statutory guidelines for the use of opioid antagonists to reverse the effect of an opioid overdose, noting Kansas is one of a handful of states that have not addressed the matter in statute. The KBI representative proposed amendments to address the potential need for the administration of an opioid antagonist to employees of the first responder agency and extend protection from civil and criminal liability for a first responder, scientist, or technician operating under a first responder agency acting in good faith and with reasonable care in administering an opioid antagonist.

Written-only proponent testimony was provided by a representative of the Kansas Association of Chiefs of Police, the Kansas Sheriffs' Association, and the Kansas Peace Officers Association and by the Kansas Emergency Medical Services Association and the Kansas City Metro Tactical Officers Association.

Written-only opponent testimony provided by the Kansas Affiliate of the American College of Nurse-Midwives stated a concern about the exclusion of certified nurse-midwives as providers able to provide emergency opioid antagonist treatment.

Neutral testimony was provided by a representative of the Board of Emergency Medical Services who stated "ambulance service" needed to be removed from the definition of a "first responder agency" because it could create confusion and could make an ambulance service respond to two regulatory entities. The representative stated ambulance services already are required to have a physician medical director for all care being provided and including ambulance services as part of the first responder agency definition would mean the ambulance service would need to coordinate its activities with itself.

The House Committee amended the bill to remove "ambulance service" from the definition of a "first responder

agency,” remove language excluding a certified nurse-midwife from the definition of a “healthcare provider,” clarify a first responder agency electing to provide an emergency opioid antagonist would provide it to its employees or volunteers, and add a scientist or technician operating under a first responder agency to those with protection from liability when receiving and administering an emergency opioid antagonist if specific conditions were met.

According to the fiscal note prepared by the Division of the Budget on the bill, as introduced, enactment of the bill could result in additional complaints or investigations regarding physicians licensed by the Board of Healing Arts (BHA) alleged to have violated requirements of the bill. An increase in the number of investigations would increase the operational expenses for the BHA; however, the BHA is unable to predict the increase in these expenses.

The fiscal note also indicates enactment of the bill would have no fiscal effect for the Board of Nursing or the Board of Emergency Medical Services. The League of Kansas Municipalities indicates enactment of the bill would have a negligible fiscal effect for local governments.

The Board of Pharmacy is unable to estimate the precise fiscal effect of developing statewide protocols that would include drafting, publishing, and adopting any administrative regulations, but any additional expenses would be absorbed within existing resources. Any fiscal effect associated with enactment of the bill is not reflected in *The FY 2018 Governor’s Budget Report*.