

SESSION OF 2019

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2389

As Amended by House Committee on Health
and Human Services

Brief*

HB 2389, as amended, would amend the Pharmacy Act of the State of Kansas to require certain prescription orders be transmitted electronically.

The bill would require every prescription order issued for a controlled substance in schedule II-IV that contains opiate to be transmitted electronically except as follows:

- Electronic prescription orders are not possible due to technological or electronic system failures;
- Electronic prescribing is not available to the prescriber due to economic hardship or technological limitations that are not reasonably within the control of the prescriber or other exceptional circumstances exist as demonstrated by the prescriber;
- The prescription order is for a compounded preparation containing two or more components or requires information that makes electronic submission impractical, such as complicated or lengthy instructions for use;
- The prescription order is issued by a licensed veterinarian;

*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>

- The prescriber reasonably determines that it would be impractical for the patient to obtain the substances prescribed by electronic prescription in a timely manner and such delay would adversely impact the patient's medical condition;
- The prescription order is issued pursuant to drug research or drug therapy protocols;
- The prescription order is by a prescriber who issues 50 or fewer prescription orders per year for controlled substances that contain opiates; or
- The U.S. Food and Drug Administration requires the prescription order to contain elements that are not compatible or possible with electronic prescriptions.

A prescriber would be allowed to request a waiver from electronically transmitting prescriptions described above for a period not to exceed six months if the prescriber could not comply with the electronic transmitting requirements due to economic hardship, technological limitations, or other circumstance demonstrated by the prescriber. The bill would allow the prescriber to request renewal of a waiver granted by the State Board of Pharmacy (Board), for a period not to exceed six months. The bill would require requests for waivers or renewals to be submitted to the Board in a form and manner prescribed by the Board and to include the reason for the request and any other information required by the Board.

If a prescriber prescribes a controlled substance by non-electronic prescription, the prescriber would be required to indicate the prescription is made pursuant to a waiver. A pharmacist would not be required to verify the validity of the waiver, either with the prescriber or the Board, but would be allowed to do so in accordance with continuing law.

The bill would take effect July 1, 2021.

Background

The bill was introduced in the House Committee on Federal and State Affairs at the request of Representative Barker on behalf of a representative of Walmart.

In the House Committee on Health and Human Services hearing, proponent testimony was provided by representatives of the Kansas Association of Chain Drug Stores, State Board of Pharmacy, and Walmart. The proponents generally stated implementing electronic prescription transmittal would increase patient safety and security, reduce prescription errors, improve medication adherence, and reduce administrative burden. A representative of the National Association of Chain Drug Stores submitted written-only proponent testimony.

Neutral testimony was provided by a representative of the Kansas Medical Society (KMS). The representative stated KMS was opposed to the bill as introduced but is in agreement with an amendment offered jointly by stakeholders.

The House Committee adopted amendments agreed upon by stakeholders, to delete a definition in the bill of “controlled substance,” and to change the electronic prescription requirement from any controlled substance, to a controlled substance in schedule II-IV that contains an opiate. The adopted amendment also added exceptions to the electronic transmission requirement, deleted the requirement technological, electrical, or other infrastructure be described in rules and regulations, and changed the effective date from January 1, 2020, to July 1, 2021.

According to the fiscal note prepared by the Division of the Budget on the bill as introduced, the Board indicates total staff time associated with complying with the bill could increase annual expenditures by \$51,500 for 0.50 inspector full-time equivalent (FTE) position and \$13,300 for 0.30 licensing FTE position. Licensing staff would be responsible

for processing waiver requests and inspector responsibilities would include reviewing the requirements set forth in the bill in pharmacy compliance reviews. The Board indicates short-term costs would include a 0.5 FTE position for a six-to-eight-month period for researching guidelines, drafting regulations, and moving regulations through the adoption process. [Note: The rules and regulations requirements were removed in the amended bill.] The Board estimates total salary and benefit costs associated with the bill would be \$116,330 for 1.3 FTE positions, but is unable to estimate a precise fiscal effect on other operating expenses.

The Board of Nursing indicates the bill would require revision of some regulations, and communication would be needed between the Board of Nursing and advanced practice registered nurses regarding the provisions of the bill, with an estimated fiscal effect of less than \$5,000.

The Board of Healing Arts indicates the bill would result in an increase in complaints and investigations, but a precise fiscal effect could not be determined.

The Kansas Dental Board, the Kansas Board of Veterinary Examiners, and the Kansas Board of Examiners in Optometry indicate enactment of the bill would have minimal to no fiscal effect. Any fiscal effect associated with enactment of the bill is not reflected in *The FY 2020 Governor's Budget Report*.