

MINUTES OF THE SENATE LOCAL GOVERNMENT COMMITTEE

The meeting was called to order by Chairman Roger Reitz at 9:30 a.m. on March 8, 2011 in Room 159 S of the Capitol.

All committee members were present except:
Senator Garrett Love--excused

Committee staff present:
Mike Heim, Revisor
Jill Shelley, Kansas Legislative Research Department
Reed Holwegner, Legislative Research Department
Noell Memmott, Committee Assistant

Conferees appearing before the committee:
Mandy Hagan, Representing Consumer Healthcare Products Association
Brad Smoot, Attorney, Representing Blue Cross/Blue Shield of Kansas
Ron Hein, Attorney, on behalf of Kansas Association of Chain Drug Stores.
Doug Mays, Doug Mays and Associates
David Schoech, R.Ph., Kansas Board of Pharmacy

The hearing continued with opposition on **SB 131 Making methamphetamine precursors schedule III prescription drugs.**

Mandy Hagan, Representing Consumer Healthcare Products Association, spoke in opposition to **SB 131 (attachment 1)**. She urged policymakers to strike the right balance between preventing illegal PSE sales and protecting access to needed medications. She urged the committee to allow electronic tracking to go into effect. Brad Smoot, Attorney, Representing Blue Cross/Blue Shield of Kansas, **(attachment 2)** spoke to the additional cost to government, private employers, and patients. Ron Hein, Attorney, on behalf of Kansas Association of Chain Drug Stores, also testified to the additional costs the bill would incur and suggested that electronic tracking go into effect before making **SB 131** into law **(attachment 3)**. Doug Mays, Doug Mays and Associates, also thought the legislature should see how effective e-tracking is before taking further action **(attachment 4)**. David Schoech, R.Ph., on behalf of Kansas Board of Pharmacy, answered questions raised by Doug Mays. He stressed the Board of Pharmacy had no agenda in delaying the electronic tracking contract other than making sure the citizens of Kansas were receiving the protections that should be afforded to them **(attachment 5)**.

Discussion followed.

Written testimony in opposition was provided by: Lis Houchen, Regional Director of Chain Drug Stores **(attachment 6)** ; Marlee Carpenter, Executive Director, Kansas Association of Health Plans **(attachment 7)**; and Eric Stafford, Senior Director of Government Affairs, The Kansas Chamber **(attachment 8)**.

The meeting was adjourned at 10:30 a.m.
The next meeting will be March 14, 2011.



founded 1881

Preserving Access to Pseudoephedrine in Kansas

Pseudoephedrine (PSE) is a safe and effective active ingredient found in leading cold and allergy medicines to provide congestion relief. An estimated 16 million Americans purchase pseudoephedrine each year. To help prevent illegal diversion of PSE for meth production, Kansas law moved all PSE products behind the pharmacy counter, limits purchases to 3.6 grams per day and 9 grams per 30 days, and requires a purchaser's signature in a logbook that is accessible by law enforcement.

Federal law now includes similar restrictions, but meth lab incidents in some states have increased because of "smurfing" – when criminals move from store to store to purchase illegal amounts of PSE to be used for the production of meth. Twelve states, including Kansas, have gone a step further and enacted laws requiring electronic stop sale systems, or e-tracking, of PSE sales. Electronic tracking unifies the logbooks that were previously kept in each individual store, preventing criminals from skirting the limits by visiting multiple stores.

Electronic blocking technology:

- Stops meth crimes before they happen by blocking illegal sales.
- Blocks 40,000 grams of PSE sales in IL, IA, KY and LA alone each month.
- Provides law enforcement with a record of purchase attempts and helps them identify meth cooks and ultimately, meth labs.

CHPA opposes requiring prescriptions for nonprescription medicines containing PSE.

A prescription requirement:

- Does not deter criminals. Illicit use of prescription drugs is the fastest growing category of drug abuse.
- Would remove existing quantity limits on PSE purchases.
- Will raise healthcare costs. If half of the estimated 16 million Americans who use PSE each year went to a doctor once a year for a prescription, this would add three quarters of a billion dollars in healthcare costs for office visits alone.
- Would decrease state sales tax revenues, as over-the-counter medications are subject to sales tax while prescription medications are not.

Criminals will adapt. Mexico banned pseudoephedrine nearly three years ago, yet is the primary source of methamphetamine in the U.S. We urge policymakers to strike the right balance between preventing illegal PSE sales and protecting access to these needed medicines for legitimate consumers. Kansas should allow its newly-adopted electronic tracking system to take effect.

Consumer Healthcare
Products Association

Senate Local Government

3-8-2011

Attachment 1

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STATEMENT OF BRAD SMOOT
LEGISLATIVE COUNSEL
BLUE CROSS BLUE SHIELD OF KANSAS
SENATE LOCAL GOVERNMENT COMMITTEE
Regarding 2011 Senate Bill 131
March 8, 2011

Mr. Chairman and Members:

On behalf of Blue Cross Blue Shield of Kansas, I appreciate the opportunity to comment on SB 131, a proposal to add ephedrine and pseudoephedrine to the list of Schedule III controlled substances. BCBSKS is the state's largest health insurer, providing insured and self-insured benefit plans to nearly 900,000 Kansans in 103 counties. Like most Kansans, we at BCBS want to do all we can to discourage the illegal manufacture of methamphetamine, which is harmful to the health and social wellbeing of the state. The Kansas Legislature recently restricted the amount of these products that can be sold while also requiring that these products to be placed behind the counter and made available to customers only upon the presentation of a drivers license and other personal information. We know of no empirical evidence that such restraints are failing to accomplish their intended objectives. SB 131, on the other hand, is a dramatic step with costly ramifications for our customers and no proven track record of significant impact on local meth production. We want to make certain that lawmakers have a clear understanding of the inadvertent consequences of scheduling these products.

As you know, dozens of commonly used over the counter medications contain the methamphetamine precursors, ephedrine and pseudoephedrine (Nyquil decongestant, Claritin D, Tylenol Sinus Severe Congestion, to name a few). Hundreds of thousands of Kansas families rely on these products during the cold and flu seasons as well as for various allergy conditions year round. Currently, most of the cost of these products is paid directly by the consumer. Absent other changes in law or health insurance contracts, the enactment of SB 131 would result in the following cost increases and cost shifts:

- Patients would be required to endure the inconvenience of an office visit with the added costs of a patient co-pay and insurance payment;
- if the physician did not require an office visit, a physician's office would still be required to contact the pharmacy and issue the prescription (uncompensated administrative cost);
- upon receipt of the product at the pharmacy, the patient would be required to pay the cost of the drug and a dispensing fee (previously not charged);

Senate Local Government

3-8-2011

Attachment 2

- if the patient has pharmacy drug coverage, he or she will be required to make a co payment and the balance of the drug cost and dispensing fee will be billed to and paid by the insurer; and finally,
- since prescriptions for Schedule III drugs can only be refilled 5 times a year, a physician visit or prescription order may be required at least twice per year.

These additional costs are particularly harsh for families where prescriptions for multiple products for the needs of the adults, the children of differing ages and the family members with differing and changing conditions. The new patient costs and insurer costs for these families will be multiplied many times over during the course of a year.

In addition, these increased health care costs are not just borne by the private sector, this is a cost increase for state and local government workers and the governmental entities (state, cities, counties, school districts, etc.) that employ and insure them. It may also be an increase for Medicare and the older population it serves as well as the Medicaid program and the many underprivileged families that must rely on it for medical care. At a time when most lawmakers are looking for ways to reduce spending for tax supported programs, SB 131 looks like a step in the opposite direction.

In summary, we sympathize with those who wish to further curb the local production of illegal methamphetamine. We believe, however, that SB 131 will prove to be a very expense measure for governments, private employers and patients. We encourage the Legislature to do a cost benefit analysis on this legislation and explore alternative methods of dealing with the illegal drug problem before further considering SB 131. On behalf of our customers, thank you for the opportunity to comment.

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Ronald R. Hein

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Testimony re: SB 131
Senate Local Government Committee
Presented by Ronald R. Hein
on behalf of
Kansas Association of Chain Drug Stores
March 8, 2011

Mr. Chairman, Members of the Committee:

My name is Ron Hein, and I am legislative counsel for the Kansas Association of Chain Drug Stores which represents the 315 chain pharmacies of the total of 603 pharmacies operating in the state of Kansas. There are approximately **1,796 community pharmacists** active in the state of **Kansas**, including **1,284 chain pharmacists**. Chain pharmacies **employ** approximately **32,893** full and part-time employees.

KACDS opposes SB 131 for several reasons.

SB 131 requires citizens of Kansas to obtain a prescription before they are able to purchase over-the-counter products commonly used to treat cold and allergy symptoms, specifically any product containing pseudoephedrine, which products are designated as schedule III controlled substances by this bill.

Other Solutions

First of all, there are other less governmentally intrusive solutions to the problem attempted to be addressed by this legislation. The Kansas Board of Pharmacy has just recently voted to enter into a contract to provide for PSE tracking in Kansas, after legislation authorizing such program was enacted in 2007. Although getting such legislation implemented has taken longer than the legislature had desired, the program can now be implemented within a matter of months, or weeks.

The PSE electronic tracking program should be given a chance to demonstrate how it can be effective against the local production of methamphetamine before additional steps are taken by the government in infringing on law-abiding citizens by forcing them to take additional burdensome steps.

If the PSE tracking system fails to prove to be an effective solution, the Legislature can still entertain this more intrusive legislation in the future.

Senate Local Government

3-8-2011

Attachment 3

Law Enforcement Access to Information

With the PSE tracking system about to go into place, law enforcement will have easy access to the data, On-line, and without burdensome and expensive requirements on law enforcement for obtaining data that will permit law enforcement to prosecute law-violating individuals that will be required if SB 131 is enacted into law.

Pursuant to the current PSE tracking system that can be ready for use by March, law enforcement will be able to access the data On-line, and thus their ability to find, arrest, and prosecute meth traffickers will be effective and burden free. If SB 131 passes, law enforcement will have to seek grand juries, or apply for a search warrant, or utilize some other subpoena process, all of which involve utilization of the courts. I am not aware of any other procedure by which law enforcement can access the data, and these processes are burdensome, time consuming, expensive, and require complex legal processes in order to access the information they need to find, track, arrest, and prosecute the meth traffickers. These processes will slow down and hamper law enforcement, and will serve as a disincentive to their seeking the information they need to track and arrest drug traffickers.

Costs for Individuals and Government Will Increase with Scheduling

If SB 131 passes, individuals will be required to incur expenses for first setting up a visit with their prescriber, or their children's prescriber, in order to obtain a prescription for their cold and cough medications. This additional expense will increase costs to the citizens of Kansas, and will increase costs to the health insurance companies, which will, in turn, increase health care costs in general. Premiums will rise accordingly on health insurance.

And as costs increase for Kansas citizens, costs will also increase for the State of Kansas. Medicaid costs will increase in two ways with this bill: First, Medicaid will now reimburse the prescription costs for some of the PSE drugs. Secondly, costs for Medicaid will increase as Medicaid recipients will now have to visit their primary care provider prior to obtaining a prescription for the PSE containing medications.

In addition to the increased costs to state government, the state and the local units of government will lose money, as there will no longer be sales tax collected on over the counter PSE products, which, as scheduled drugs, will be exempt from sales tax.

The fiscal note of SB 131 alone is enough to urge this committee to defeat SB 131.. Add the burdens and costs to the citizens and law enforcement of Kansas, and the existence of a better remedy, the evidence is overwhelming that SB 131 should be defeated.

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

Noell Memmott

From: Doug Mays [dougdays@kscapitol.com]
Sent: Wednesday, March 09, 2011 3:15 PM
To: Roger Reitz
Subject: Senate Bill 131 - Doug Mays 3/8/2011 Testimony

Testimony of Doug Mays regarding Senate Bill 131 - Methamphetamine Precursors

Date: March 8, 2011

Mr. Chairman and members of the committee:

Prior to and during the 2009 session, I was heavily involved with the passage of legislation that adopted electronic tracking program for over the counter drugs containing methamphetamine precursors in Kansas. During the time leading up to the session, two field trials were conducted simultaneously by law enforcement agencies in western Kansas and in southeast Kansas to judge the usefulness of such programs. The agencies involved included the KBI, county sheriffs, and local police. The outcome of the trials was favorable.

Crawford County Sheriff Sandy Horton testified before the House Judiciary committee that he and other law enforcement agencies in southeast Kansas were pleased. He urged the committee to pass the electronic tracking program bill and deploy it statewide as soon as possible. The bill did pass directing the Kansas Pharmacy Board to implement the program.

For reasons unknown to me, it has taken nearly two years to bring a system on line. Now, at no cost to the state of Kansas, we are within weeks of going live. Common sense suggests that we stay the course, try the program for two or three years and, if it doesn't work, the legislature should revisit scheduling.

Thank you.

Doug Mays

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Senate Local Government

3-8

Attachment 4



Testimony concerning SB131
Making methamphetamine precursors
Schedule III prescription drugs
Presented by David Schoech, R.Ph.
On behalf of
Kansas Board of Pharmacy
March 7, 2011

Chairman Reitz and members of the Committee:

My name is David Schoech, R.Ph. and I am a member of the Kansas State Board of Pharmacy. I wanted to respond to the statements that were made by Doug Mays the lobbyist for Appriss, Inc.

Mr. Mays testified that he wanted a response from the Board of Pharmacy as to why it took so long for the Board to enter into a contract with Appriss, Inc. He implied that the Board of Pharmacy has been negligent in getting the regulations completed and in getting an electronic logging contract with his company. Consumer Healthcare Products Association's, ("CHPA") member companies entered into an exclusive contract with Appriss, Inc. and were offering to pay for the electronic logging system and make it available to any state willing to keep the product as over the counter. What the committee should know is that Appriss, Inc. provided the Board with a Memorandum of Understanding, ("MOU") that was found to be unacceptable by CHPA after the Board spent considerable time negotiating. The second agreement took additional time because Appriss, Inc. would not agree to track 100 percent of the pseudoephedrine and ephedrine products. To date, they have not given a sufficient explanation as to why they cannot track every product that is sold as a nonprescription product in Kansas. Only those products manufactured by CHPA's members and who are paying for the system can be monitored through the NPLeX system. The Board of Pharmacy has been frustrated with various issues that were not of their making.

The Board of Pharmacy has worked diligently on this project and used a lot of time and resources. It is frustrating to hear Appriss, Inc. criticize the Board of Pharmacy when the Board was not the problem. We are willing to do whatever the legislature determines that we should do but I wanted to make it clear that the Board of Pharmacy had no agenda in delaying this project other than making sure that the citizens of Kansas were receiving the protections that should be afforded to them.

Thank you for letting me testify in this matter.

Senate Local Government

3-8-2011

Attachment 5



NATIONAL ASSOCIATION OF
CHAIN DRUG STORES

Testimony by the National Association of Chain Drug Stores
before the Senate Local Government Committee
in Opposition to Senate Bill 131 - Scheduling of Pseudoephedrine Products
prepared by Lis Houchen, Regional Director
lhouchen@nacds.org

Chair Reitz and honorable members of the committee, on behalf of the members of the National Association of Chain Drug Stores Operating in the State of Kansas, I offer this written testimony in opposition to Senate Bill 131, which would designate any product containing pseudoephedrine as a schedule III control substance and thereby require individuals to obtain a prescription before they are able to purchase over-the-counter products commonly used to treat cold and allergy symptoms.

As background, the members of the National Association of Chain Drug Stores (NACDS) operating in Kansas include: Balls Food Stores, Costco, Health Mart Systems, Hy-Vee, Medicine Shoppe International, Osborn Drugs, Pamida, Sears Holdings Corporation, Target, USA Drug, Walgreen, and Wal-Mart. These companies operate over 300 individual pharmacies, employ 32,893 full and part-time employees, and pay over \$451 million in taxes annually to the state.

I would like to begin by complimenting the Legislature on enacting the legislation contained in HB 2062, in 2007. This important legislation created the framework for a statewide program to electronically track sales of over-the-counter pseudoephedrine products. With the adoption of this legislation and the Board of Pharmacy's recent decision to sign a Memorandum of Understanding with Appriss to track product sales through the National Precursor Log Exchange (NPLEx), you have given law enforcement and retailers at the point of sale the ability to identify and prevent individuals from purchasing excessive quantities of pseudoephedrine products that could potentially be used to manufacture methamphetamine.

NPLEx does two things simultaneously. It provides a hard stop at the point of sale if an individual is attempting to purchase over the legal limit, and the information is transmitted electronically to a central depository allowing law enforcement to act swiftly to apprehend the offenders. NPLEx also allows a retail employee the ability to override the "stop" sale IF they fear physical harm from denying the sale.

NPLEx was developed for use by law enforcement and was recently expanded to include a point of sale component that allows the communication of sales by retailers. In addition, NPLEx is provided by the National Association of Drug Diversion Investigators (NADDI) **at no cost to states** that have established the legislative framework for such a program to operate, as has happened recently in Kansas.

While some might argue that pseudoephedrine products could similarly be monitored under the state's prescription drug monitoring program if these products were designated as schedule III controlled substances, in order for law enforcement to obtain dispensing records for these products, they would first have to request information on a particular

Senate Local Government

3-8-2011

attachment 6

individual pursuant to a search warrant. By comparison, the state's electronic sales tracking program allows law enforcement to more easily access sales data from the database without the need for a search warrant and is thus a more efficient mechanism for law enforcement, particularly as the NPLeX program provides real-time information at the point of sale.

Requiring a prescription for over-the-counter pseudoephedrine products will also unnecessarily increase overall healthcare costs for consumers, state and federal governments, and private employers. Consumers, health insurers and other third party payers, including Medicaid, would be forced to absorb the added cost of an otherwise unnecessary doctor and emergency room visits, thus ballooning the cost of treating colds, flu, and allergies from a few dollars to upwards of \$100. These added costs would be hard felt under state Medicaid program budgets at a time when states are looking to cut program costs. Based on our research, the average cost of a doctor's visit is \$121.20. If just 5% of the pseudoephedrine products purchased went to Medicaid recipients, the additional cost to Medicaid just for doctor's visits to get a prescription would be in excess of \$160,000. This is a very conservative estimate that could easily increase if more patients sought prescriptions or if patients sought care through an emergency room visit.

Moreover, requiring a prescription for over-the-counter pseudoephedrine products would be inconvenient and would result in reduced productivity, as legitimate consumers would be forced to take time away from work to schedule appointments with physicians for themselves and family members. During the cold and flu season when doctors are particularly busy, this could result in unnecessary delay of treatment for both patients suffering from colds as well as other, more critically ill patients. Patients who do not have established relationships with physicians would be forced to seek care from physicians in emergency rooms and other urgent care settings, or forgo care altogether. This would detract from the care that emergency institutions provide to other, more critical patients, and would be unjustifiably costly. Furthermore, consumers living in rural areas that do not have access to a physician in the community would be forced to forego treatment entirely or travel unreasonable distances to visit the closest available physician.

I respectfully ask the committee to not pass Senate Bill 131, but instead to allow for the implementation of the electronic tracking program to take effect. The agreement between the Board of Pharmacy and Appriss is for two years at no cost to the state or prescribers. If at the end of that period, there has not been a significant decrease in methamphetamine labs as a result of local sales, and a significant increase in police activity, I would encourage the Legislature at that time to revisit this issue.



Kansas Association of Health Plans

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March 8, 2011

SB 131

Written Testimony before the Senate Public Health Committee Marlee Carpenter, Executive Director

Chairman Reitz and members of the Committee;

I am Marlee Carpenter, Executive Director of the Kansas Association of Health Plans (KAHP). The KAHP is a nonprofit association dedicated to providing the public information on managed care health plans. Members of the KAHP are Kansas licensed health maintenance organizations, preferred provider organizations and other entities that are associated with managed care. KAHP members serve the majority of Kansans enrolled in private health insurance. KAHP members also serve the Kansans enrolled in HealthWave and Medicaid managed care. We appreciate the opportunity to provide comments to this committee.

KAHP is here today to express concerns with SB 131. This bill will require a prescription for methamphetamine precursor drugs. Requiring a prescription will cause increased costs by requiring an office visit to a physician, the writing of a prescription as well as expenses charged for the dispensing of the drugs. In addition, if these drugs are required by state law to be prescription only, many insurance company contracts will be required to cover them under their prescription benefits package. All these items together will significantly increase the cost to the insurance companies and the consumers. This bill will dramatically increase the cost of the common cold and the cost to seasonal allergy sufferers.

Over the last few years, several changes have been made by the Kansas Legislature to help combat the purchase of a large quantity of these drugs to be used for illegal purposes. These systems should be implemented and in place so that we can see if they are effective before other measures are enacted.

KAHP has concerns with the increased cost that SB 131 will bring to consumers. We encourage your careful consideration of this issue. Thank you for your time and I will be happy to answer questions at any time.

Senate Local Government

3-8-2011

Attachment 7

**Testimony before Senate Committee on Local Government
SB 131- Making Methamphetamine Precursors Prescription Drugs
Presented by Eric Stafford, Senior Director of Government Affairs
Tuesday, March 8, 2011**



Chairman Reitz and members of the Committee:

We appreciate the opportunity to provide testimony in opposition of SB 131 which would make nonprescription pseudoephedrine (PSE) products available only by obtaining a prescription from the consumer's physician.

While SB 131 has good intentions of limiting access to medicine containing pseudoephedrine used to make methamphetamine, there are many unintended consequences of this legislation that ultimately will add significant costs to the consumer, and potentially the state.

Today for a consumer to purchase medicine containing PSE, pharmacies collect the purchaser's driver's license and signature to enter into a logbook that is accessible by law enforcement. However, many meth cooks cheat the system by purchasing large quantities of PSE from multiple stores because this database is not updated in real time.

Currently 10 states including Kansas have adopted legislation to implement a multi-state electronic PSE sales tracking system funded by manufacturers of medicines containing PSE. Known as the National Precursor Log Exchange, or NPLeX, this electronic database would monitor purchases of these drugs in participating states, in real time, and provides law enforcement officials an effective tool to prevent the purchase of large quantities of nonprescription PSE medicine. This national database will track purchases in all (participating) states so meth manufacturers cannot go across state lines to purchase more drugs.

As I previously mentioned, changing nonprescription PSE products to prescription status will result in unnecessary increases in health care costs to all consumers simply to limit access for the few bad actors. Consumers will be forced into scheduling appointments with their physicians and covering their copay if they have insurance only to receive a prescription for a common cold or seasonal allergies. Those without insurance will either have to absorb the cost of a doctor visit or be denied access because they lack a prescription. Providers will also experience significant administrative burdens for processing claims.

We urge this committee to reject Senate Bill 131 and give the NPLeX program time to work before making significant changes to the law. Thank you again for the opportunity to present testimony in opposition to SB 131.

The Kansas Chamber, with headquarters in Topeka, is the leading statewide pro-business advocacy group moving Kansas towards becoming the best state in America to do business. The Chamber represents small, medium and large employers all across Kansas.



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Senate Local Government

3.8.2011

Attachment B