Approved: March 3, 2011
Date

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 10, 2011, in Room 546-S of the Capitol.

All members were present.

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

Conferees appearing before the Committee:
Nancy Zogleman, Legislative Counsel, Pfizer
Ron Hein, Kansas Association of Chain Drug Stores
David Root, Medco Health Solutions, Inc. and Affiliates
Brad Smoot, Blue Cross/Blue Shield of Kansas
Ron Gaches, Independent Pharmacy Service Corporation

Others attending:
See attached list.

The Chair opened the hearing on **SB 99—Electronic transmission of prescription order.** Staff explained that this legislation would establish requirements for prescription drug orders transmitted from a prescriber to a pharmacy through electronic transmission or e-prescription. It would require any e-prescription be directly transmitted from the prescriber to a pharmacist. The transmission device would not be allowed to interfere with the prescription by means of a medication limit list or multiple messaging at the point of submission to a pharmacy. It would also prohibit the e-prescribing mechanism from attempting to influence the prescribing decision of a health care provider at the point of care. The bill could increase costs to insurers and patients because an important formulary messaging tool would no longer be available. The e-prescribing provisions would not affect Medicaid expenditures in the current year but may affect future year's expenditures.

Nancy Zogelman, Legislative Counsel for Pfizer, expressed that this legislation was the first step in implementing and adopting standards for e-prescribing. She stated it was important to consider three things: Physicians can see any and all medicines available to them when treating their patient; states must have the ability to adjudicate prior authorization and step therapy protocols online; and excessive online interference is avoided while the safety notices involving medication labels are preserved (Attachment #1).

Written testimony in support of this bill was submitted by Carolyn Gaughan, Kansas Academy of Family Physicians (Attachment #2).

Speaking in opposition to this legislation was Ron Hein, on behalf of Kansas Association of Chain Drug Stores. He indicated that this bill would impose unworkable requirements on e-prescribing that would halt this practice in the state of Kansas, that it would result in increased health care costs for consumers, health insurers and other third party payors, including Medicaid and that it was unnecessary as existing state law already regulates appropriate e-prescribing practices (Attachment #3).

Also in opposition was David Root, Medco Health Solutions, Inc and Affiliates. He stated this legislation would stifle further development of e-prescribing in Kansas and is in direct conflict with e-prescribing national standards as they are being further developed today (Attachment #4).

Brad Smoot, Legislative Counsel for Blue Cross/Blue Shield of Kansas, stated that they support electronic prescribing but stated that this bill does not add to the benefits of electronic prescribing but rather detracts from them. The net effect of this bill, in his opinion, would reduce the ability of the physician and pharmacist to exchange valuable medical and cost information. In addition, Mr. Smoot included a letter of opposition from Michael Atwood, Chief Medical Officer for BCBSKS (Attachment #5).

Speaking in opposition, Ron Gaches, representing the Kansas Independent Pharmacy Service Corporation, believes that electronic transmission of prescription orders provided important efficiencies to the delivery of patient services; however, it appears to place significant limitations on the flow of information that can be provided the prescribing physician from the pharmacist that receives the prescription (Attachment #6).

Written testimony in opposition to **SB 99** was submitted by Sara Arif, Director of Public Affairs for the Kansas Department of Aging (Attachment #7), John Bottenberg (Attachment #8), Stacey Fahrner, Vice President, Government Affairs, Prime Therapeutics, LLC (Attachment #9), and William Sneed, Legislative Counsel for America's Health Insurance Plans (Attachment #10).

There being no further conferees, the hearing on **SB 99** was closed.

The meeting adjourned at 1:20 p.m. The next meeting is scheduled for February 14, 2011.

SENATE PUBLIC HEALTH AND WELFARE COMMITTEE GUEST LIST

DATE: Thursday, February 10, 2011

NAME	REPRESENTING
Deb Billingsley	KBOP
Pat Hubbell	PH Assoc
Susan Zalenski	JCCI
PHIL CAUTHON	KANSAS HEALTH INSTITUTE
Dodie Wellshear	KAFP
Bob Williams	Ks. Osteopathic Medicine
[illegible]	Ks Optometric Assn.
DERRIC HEIN	HEIN LAW FIRM
Bret Arnold	Pinegar, Smith & Assoc.
Tom Gaches	KIPSC
Rob Neely	Kennedy & Assoc.
Jamel Jobe	United Health Group
RON HEIN	HEIN LAW FIRM
Leigh Keck	Capitol Strategies

Hearing on SB 99 – Electronic Transmissions of Prescription Order
Senate Public Health and Welfare
February 10, 2011

Madam Chair, Members of the Committee, thank you for the opportunity to discuss SB 99 today. My name is Nancy Zogleman and I am Legislative Counsel for Pfizer. Pfizer is the world's largest biopharmaceutical company with a diversified health care portfolio that includes human and animal medicines, sold in both branded and generic medicines. With me today is Drue Duncan from Pfizer.

SB 99 is a first step in implementing and adopting standards for prescription orders that are transmitted electronically. Electronic prescribing (eRx) is the ability to send prescriptions from providers to the pharmacy electronically.

This first step is important in the bigger picture of electronic health records (EHR) and Health Information Technology (HIT). The Health Information Technology for Economic and Clinical Health (HITECH) Act provides HHS with the authority to establish programs to improve health care quality, safety, and efficiency through the promotion of HIT, including electronic health records and private and secure electronic health information exchange.

Under HITECH, eligible health care professionals and hospitals can qualify for Medicare and Medicaid incentive payments when they adopt certified EHR technology and use it to achieve specific objectives. In order to be eligible for the $34 billion in incentives, medical providers must demonstrate "meaningful use" of EHRs, which must include an electronic prescribing function.

As this process continues, the state must proceed with modifying its language to ensure protection of the patient, privacy of the information, promotion of physician-patient communication and preserving the physician's role and choices in working with the patient. In order to do so, it is very important to consider three things:

1) That physicians can see any and all medicines available to them when treating their patient

2) That states must have the ability to adjudicate prior authorization and step therapy protocols online.

3) Excessive online interference in the form of advertising, needless pop-ups, and financial incentives that seek to change the normal prescribing pattern of the physician be avoided, while safety notices involving medication labels, safety alerts, and other notifications are preserved.

All of these goals are done to ensuring that physicians can treat their patients with the best care as quickly as possible.

Keep in mind, in May of 2010 a survey from by the American Medical Association (AMA) identified the following issues physicians have with the paper prior authorization process:

1) 67% have trouble determining *which* drugs require preauthorization
2) 69% of physicians typically wait several days to receive preauthorization from an insurer for drugs
3) "Nearly all physicians surveyed said that streamlining the preauthorization process is important and 75% believe an automated process would increase efficiency."

These kinds of hurdles waste physicians' time and cost them money. A study published in *Health Affairs* in 2009 showed physicians spend between $23.2 to $31 billion a year on administrative issues such as paper prior authorization.

It seems with this kind of expense, and the rapid pace at which technology is moving it would be possible to make this paper process easier. Back in 2006, the Centers for Medicare and Medicaid Services (CMS) conducted pilots to determine how best to e-prescribe. Even before those pilots, other federal groups were working on the concept of electronic prior authorization.

The National Council for Prescription Drug Programs (NCPDP) created a task force called the Prior Authorization Workflow-to-Transactions Task Group, began in 2004. The task group examined prior authorization requirements relayed to prescribers through the e-prescribing process through claims processing. The task force assisted with the CMS pilots conducted in 2006. In 2009, the task group announced that an XML solution for new drug PA transactions was available for broader pilot testing. However, the federal effort has stalled – the NCPDP work group has been on hiatus since November, 2009 and was disbanded in November 2010.

The Committee should be aware that the Agency of Health Care Research and Quality (AHRQ) published a report of the results of these CMS pilots in 2007. AHRQ says in the report:

"A final PA standard should support a fully automated, real-time e-PA process. This standard should be built with the assumption that criteria can be pre-loaded into point-of-care (POC) software systems. ***The focus should be on providing an infrastructure and format for e-PA, but it is unlikely that health plans will agree to standardized forms or questions for the PA request."***

Because of this lack of progress at the federal level in the past few years, many states are moving ahead in this area. In 2010, 70 bills were introduced in 27

different states addressing HIT. Minnesota, for example, has mandated that the health commissioner adopt the best way to standardize prior authorization requests with the goal of making electronic transmissions as efficient as possible. Other states have put into statute language dealing specifically with alerts in electronic transmissions. Florida, Maine, New Hampshire and Vermont have each put into law language that prohibits advertising, instant messaging, pop-ups, financial incentives, and other measures.

In closing, we respectfully request that you consider SB 99 as a starting point to address this important issue. We look forward to working with the members of this committee and other stakeholders to see that the best interests of the patient are preserved. Thank you.

AMA
AMERICAN
MEDICAL
ASSOCIATION

AMA SURVEY OF PHYSICIANS ON PREAUTHORIZATION REQUIREMENTS
May 2010

Hassle factor related to preauthorization requirements
Nearly all physicians report that eliminating hassles caused by insurer preauthorization requirements is very important (78%) or important (17%).

Preference for an automated preauthorization process
Three-quarters (75%) of physicians said an automated preauthorization process would help them manage patients' care more efficiently.

Vague preauthorization requirements
Nearly two-thirds (64%) of physicians report it is difficult to determine which test and procedures require preauthorization by insurers. More than two-thirds (67%) of physicians report it is difficult to determine which drugs require preauthorization by insurers.

Wait times with preauthorization requests
Nearly two-thirds (63%) of physicians typically wait several days to receive preauthorization from an insurer for tests and procedures, while one in eight (13%) wait more than a week. More than two-thirds (69%) of physicians typically wait several days to receive preauthorization from an insurer for drugs, while one in ten (10%) wait more than a week.

Obtaining approval on preauthorization requests
Nearly half (46%) of physicians experience difficulty obtaining approval from insurers on 25 percent or more of preauthorization requests for tests and procedures. More than half (58%) of physicians experience difficulty obtaining approval from insurers on 25 percent or more of preauthorization requests for drugs.

Insurer review of first-time preauthorization requests
Nearly half of physicians (43%) report that first-time preauthorization requests are "often" reviewed by an insurer representative without medical training.

Insurer rejections of first-time preauthorization requests
More than one-third (37%) of physicians experience a 20 percent rejection rate from insurers on first-time preauthorization requests for tests and procedures. More than half (57%) of physicians experience a 20 percent rejection rate from insurers on first-time preauthorization requests for drugs.

Appealing insurer rejections of first-time preauthorization requests
More than half (52%) of physicians report appealing 80% or more of insurer rejections on first-time preauthorization requests for tests and procedures. Nearly two-fifths (39%) of physicians report appealing 80% or more of insurer rejections on first-time preauthorization requests for drugs.

KANSAS ACADEMY OF FAMILY PHYSICIANS
CARING FOR KANSANS

Written Testimony: Senate Bill 99
Senate Public Health & Welfare, February 10, 2011
By: Carolyn Gaughan, CAE, Executive Director

Chairman Schmidt and members of the committee:

Thank you for the opportunity to submit written comments in support of **Senate Bill 99**. As you know, it stipulates that all electronic prescriptions are to be transmitted directly to a pharmacist or certified pharmacy technician at a licensed pharmacy of the patient's choice with no intervening person having access to the prescription order (e.g., pharmacy benefit managers). Electronic prescriptions will be required to have no interference or limitations and have no program, platform, or device which presents advertising, instant messaging, pop-up messaging or any other attempt to influence prescribing decisions. Information on formularies may be presented through any e-prescribing program provided that all outpatient drugs and pharmacies (in and out of network) available are readily disclosed and an appropriate authorization process be offered for approval of exceptions to plan formularies.

The interest in e-prescribing as a means of improving health care quality dates back at least to 2000, when the Institute of Medicine (IOM) published *To Err Is Human,* [1] a report that described the enormous amount of iatrogenic illness in our health care system. *To Err Is Human* estimated that medication errors alone account for the deaths of more than 7,000 Americans annually. Automated prescribing processes, particularly as related to hospital care, were highlighted as a key solution. Subsequently, in July 2006, the IOM published a report called *Preventing Medication Errors.* [2] In it they claimed that our current paper-based prescribing system is responsible for at least 1.5 million preventable injuries annually in the United States. Prescription illegibility, look-alike drug names, incorrect dosing, drug-drug interactions, drug-disease interactions and failed allergy checking are thought to be prime culprits. *Preventing Medication Errors* recommended that the government and payers promote electronic prescribing. On July 9, 2008, the Medicare Improvements for Patients and Providers Act passed. Section 132 of the bill provides economic incentives for physicians to e-prescribe.

In his article in *Family Practice Management,* [3] Dr. Kenneth Adler states, "The number one benefit of e-prescribing is, without question, safety. In addition to the safety benefits of legibility, Tall Man lettering, checking for interactions, checking for allergies, etc., one that is often overlooked is the ability to quickly identify patients on recalled medications or medications still on the market whose safety has been called into question.to quickly identify patients on recalled medications or medications still on the market whose safety has been called into question. E-prescribing offers a reliable and efficient way to handle drug recalls that just isn't possible in the paper world."

Please let me know if you have any questions and thank you for your consideration.

1. Kohn LT, Corrigan JM, Donaldson MS, eds, Committee on Quality of Health Care in America, Institute of Medicine. *To Err Is Human: Building a Safer Health System*. Washington, DC: National Academies Press; 2000.
2. Aspden P, Wolcott J, Bootman JL, Cronenwett LR, eds, Committee on Identifying and Preventing Medication Errors, Institute of Medicine. *Preventing Medication Errors: Quality Chasm Series*. Washington, DC: National Academies Press; 2006.
3. Kenneth G. Adler, MD, MMM, E-prescribing: Why the Fuss? *Family Practice Management,* 2009 Jan-Feb;16(1):22-27.

Senate Public Health & Welfare
Date 2-10-2011
Attachment 2

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Ronald R. Hein
Attorney-at-Law
Email: rhein@heinlaw.com

Testimony re: SB 99
Senate Public Health and Welfare Committee
Presented in writing by Ronald R. Hein
on behalf of
Kansas Association of Chain Drug Stores
February 10, 2011

Madam Chairman, Members of the Committee:

My name is Ron Hein, and I am legislative counsel for the Kansas Association of Chain Drug Stores (KACDS) which represents the chain pharmacies operating in the state of Kansas, and functioning as the state affiliate of the National Association of Chain Drug Stores (NACDS).

KACDS opposes SB 99 for the reasons set out in the letter from the NACDS attached to my testimony.

Thank you very much for permitting me to submit this written testimony, and I will be happy to yield to questions.

NACDS NATIONAL ASSOCIATION OF CHAIN DRUG STORES

February 7, 2011

Oppose S.B. 99 Which Could Cripple E-prescribing Practices in Kansas

Members of the Senate Standing Committee on Public Health and Welfare:

On behalf of the approximately 315 chain pharmacies operating in the state of Kansas, the National Association of Chain Drug Stores (NACDS) thanks the Senate Standing Committee on Public Health and Welfare for considering our comments on S.B. 99 relating to electronically transmitted prescriptions. We respectfully ask the committee to consider our comments about why this type of legislation is unwarranted, and vote not to pass this bill out of committee.

Electronic prescribing is a well-established and legal practice in the state of Kansas and throughout the country. Electronic prescribing technology increases operational efficiencies and enhances the level of accuracy of prescriptions that are transmitted in this manner. For a number of years now, prescribers and pharmacies in all fifty states have employed this useful technology to improve the quality of patient care and to deliver efficient and cost-effective care to patients. We are therefore concerned that S.B. 99 could severely impair the ability of healthcare providers in Kansas to continue to use this important tool in their practices.

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P.O. Box 1417-D49
Alexandria, Virginia
22313-1480

S.B. 99 would impose unworkable requirements on e-prescribing that would halt this practice in the state of Kansas. This legislation would impede the electronic prescribing systems used throughout the country by prohibiting any person or entity other than the prescriber or a pharmacist from "accessing" electronic prescriptions. Current electronic prescribing practices rely on electronic prescribing networks to perform formatting and routing services for electronic prescriptions. These networks need access to the prescription in order to serve this function; without them, it would fall upon pharmacies to purchase and implement the numerous software packages used by prescribers so that their systems would be capable of accepting prescriptions formatted in myriad ways. This would be quite costly, which would ultimately deter pharmacies from expending the resources necessary to accommodate numerous prescribers' electronic prescribing systems.

The legislation would also impose requirements for electronic prescribing devices to accommodate written reminders to be provided to the patient at the time of an office visit pertaining to what prescription has been ordered electronically and to what pharmacy the prescription was sent. Although the notion of this type of a patient "receipt" has been discussed, at present time, no electronic prescribing devices are capable of performing this function; thus, this mandate could not be met by any prescriber or electronic prescription device vendor with the technology that exists today.

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Fax (703) 836-4869
www.nacds.org

3-2

This bill would result in increased healthcare costs for consumers, health insurers and other third party payors, including Medicaid. The restrictions on messaging that the legislation would impose on electronic prescribing systems would ultimately interfere with practices meant to manage drug costs. Such restrictions could undermine programs employed by Medicaid and other third party payors meant to alert prescribers to preferred drugs on patients' formularies (including where lower-costing generic products are preferred) and could otherwise limit the information that prescribers receive to make prescribing decisions for a particular patient. This could unfortunately lead to decreased generic dispensing rates and higher costs for state Medicaid programs and other payors trying to manage escalating healthcare costs. According to 2009 Medicaid utilization data provided by CMS, the average cost of a brand drug dispensed under the Kansas Medicaid program was $266.66; by comparison, the cost of a generic drug was $25.89. Especially in these economically challenging times, it would be imprudent to pass legislation that would increase healthcare costs for the state and other payers in this manner.

This legislation is unnecessary; existing state law already regulates appropriate e-prescribing practices. The Pharmacy Practice Act[1] and implementing regulations[2] already extensively addresses requirements for electronic prescriptions and electronic prescribing practices and includes appropriate limitations on who may access prescription orders and for what purpose. Layering on the additional requirements in S.B. 99 on top of existing ones would be unnecessary, especially considering the detrimental impact that the new requirements would have on e-prescribing practices.

In conclusion. We again urge committee members to protect the ability of prescribers and pharmacies to continue to utilize electronic prescribing in their practices by voting no on this unnecessary legislation. We thank you for your consideration of our comments on this important issue.

Sincerely,

Lis Houchen
Regional Director, State Government Affairs, NACDS

[1] K.S.A. 65-1626; K.S.A. 65-1626d; K.S.A. 65-1637; K.S.A. 65-1642
[2] K.A.R. 68-2-22; K.A.R. 68-20-10a

medco®

Statement of David Root
Medco Government Affairs
Medco Health Solutions, Inc and Affiliates
Senate Public Health Committee
SB 99
February 10, 2011

Madam Chair and members of the Committee, my name is David Root and I represent Medco Health Solutions, Inc. and Affiliates, which is a pharmacy benefits management company (PBM).

Medco Health Solutions, Inc., and Affiliates is a leading health care company that is advancing innovations in the practice of pharmacy. We provide comprehensive, high quality, affordable prescription drug care to over 65 million Americans. We currently manage the prescription drug benefit for approximately 18% of the Kansas population. We are licensed in the state as a non-resident and third party administrator. Thank you for the opportunity to appear before you today to express our opposition to SB 99.

We believe that this legislation would stifle further development of e-prescribing in Kansas and is in direct conflict with e-prescribing national standards as they are being further developed today. In addition, this legislation would increase costs to providers and patients due to its chilling effect on generic utilization opportunities.

We work with patients, pharmacists, physicians, and health plan sponsors to improve the quality of pharmaceutical care provided to patients, while helping to control the growth in drug costs. We work under contract with health plan clients throughout the country that are providing prescription drug benefits for their members and employees. Our clients include such health care purchasers as:

Fortune 500 corporations & smaller employers
Local, state, and federal employee and retiree groups
Blue Cross and Blue Shield plans
Labor Unions
Insurance carriers and managed care plans.

Medco is totally committed to implementation of e-prescribing as well as other health information technologies as they assist in helping control costs for payors and patients by streamlining processes and communications. Medco participates in the National Counsel for Prescription Drug Plans or NCPDP, a not for profit

Senate Public Health & Welfare
Date 2-10-2011
Attachment 4

standards development organization representing all sectors of the pharmacy services industry, to develop national standards for interoperability that will ensure a smooth transition and national adoption of health information technologies.

Senate Bill 99 is little more than a veiled attempt by name brand drug manufacturers to prevent payors, including state Medicaid programs from using e-prescribing technology to identify cost savings opportunities – specifically increased generic utilization opportunities. Additionally, SB 99 would require providers in Kansas to work off two different technology platforms. Kansas providers would be forced to operate one platform for payors utilizing the national standard platform adopted by Med D plans and others as developed by CMS and NCPDP and then a second platform for Kansas plans specific to the requirements created by this state specific law. Adding needless cost and headache to an already complex system.

Specifically, the bill would restrict the transmission of key benefit information at the point of prescribing. The bill uses overly broad language that "restricts interference or limitations, and influencing or attempting to influence the prescriber." This language would prohibit the legitimate use of prescriber and patient decision support tools. These tools are designed to relay important benefit information often through instant messages or pop-ups that would alert the prescriber to more cost effective options when they are available for the patient. Things such as alerting the provider that a generic medication is now available or that a medication can be obtained through mail or a specialty pharmacy at a reduced cost to the patient and the plan.

By eliminating these opportunities to share information the brand drug manufactures hope to keep brand drug market share in the face of increasing generic availability. All at the expense of the patient and the overall cost of the benefit.

We would urge you to NOT support SB 99. A vote in favor of this bill would place Kansas outside the boundaries of the national standards, and would place additional burdens on Kansas providers with respect to e-prescribing. By opposing this bill you would allow Kansas plans and patients to continue to take full advantage of the cost saving benefits of generic usage opportunities.

BRAD SMOOT
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STATEMENT OF BRAD SMOOT
LEGISLATIVE COUNSEL
BLUE CROSS BLUE SHIELD OF KANSAS
SENATE PUBLIC HEALTH & HUMAN SERVICES COMMITTEE
Regarding 2011 Senate Bill 99
February 10, 2011

Madam Chair and Members:

Thank you for this opportunity to comment on 2011 SB 99 on behalf of Blue Cross Blue Shield of Kansas. BCBSKS is mutual insurance company providing health insurance coverage for nearly 900,000 of your fellow Kansans in 103 counties. As a mutual insurer, we are owned by our policyholders and therefore strive to provide the best premium value and do all we can to lower the out of pocket costs for our customers and their families. Consistent with these objectives, we must respectfully oppose the passage of SB 99.

We at BCBSKS support electronic prescribing. It is the way of the future. We believe it can improve care and save health care dollars. SB 99, however, does not add to the benefits of electronic prescribing but rather detracts from them. The net effect of this bill is to reduce the ability of the physician and pharmacist to exchange valuable medical and cost information.

To begin with, we are unsure why state intervention and regulation is necessary now. It is our understanding that a national standards development group, the National Council for Prescription Drug Programs (NCPDP), has been working for several years on standards for e prescribing with the goal that they might someday be part of future federal guidelines. It is premature to jump into this highly technical arena before some consensus has been reached and the federal government has spoken on the subject.

The troubling Section is 3(b) which prohibits attempts to "influence or interfere" with prescribing decisions using "pop ups" or "instant messaging," two of the most common and efficient methods of electronic communication. You may also wish to note that Section 3 (d) suggests that nothing in 3(b) is "designed to" make the patient or professional's decisions "more difficult." Those two provisions seem contradictory on their face. Who is to interpret when there is a violation of this Section and what constitutes making a decision "more difficult?" The act doesn't say. Likewise, Section 3, subsection (e) declares that the content of any electronic transmission must be "substantially supported by scientific evidence, (be) accurate, up to date, and fact-based." Who is to determine this? What standards are to be used? And, how is this law enforced? Litigation? Good for lawyers; bad for the rest of us.

Attached to my remarks is a letter to the Committee from Dr. Michael Atwood, the Chief Medical Officer at BCBSKS. Dr. Atwood is a long time practicing physician with considerable experience with electronic prescribing. He concludes in the letter that SB 99 will have a negative impact on "patient safety, cost containment and physician efficiency." I encourage you to review his letter at your convenience.

We encourage this committee to reject SB 99. Now is not the time and this is not the bill by which the state of Kansas should "interfere" in the very important business of electronic prescribing. Thank you for consideration of our views.

BlueCross BlueShield of Kansas*

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Topeka, Kansas 66629-0001

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In Topeka - (785) 291-7000
In Kansas - (800) 432-0216

February 9, 2011

Re: Senate Bill 99

To members of the Senate Public Health and Welfare Committee:

I would like to offer comments in opposition to Senate Bill Number 99, which will be considered by this committee on Thursday, February 10, 2011.

I believe if SB 99 is enacted it will greatly reduce the benefits that have already been achieved through the use of electronic prescriptions. This bill does not promote increased adoption of this technology.

Electronic prescriptions offer several essential benefits over traditional paper prescriptions that include:

1. Reduced errors related to legibility of medication names and doses;
2. Drug-drug and drug-allergy checking at the point of care;
3. Increased efficiency by avoiding unnecessary pharmacy phone calls to physician offices;
4. Reduced costs for consumers and payers related to preferred drug compliance and generic substitution when medically appropriate.

This bill would prohibit many of these established patient safety and economic benefits of electronic prescriptions. The prohibition of clinical messaging mandated by SB 99 will prevent automated drug-drug interaction checking and drug-allergy checking at the point of care. These processes have proven to both reduce patient harm and reduce costs related to the medical care associated with treating preventable medication errors.

I strongly encourage you to oppose Senate Bill 99 due to the negative impact it will have on patient safety, cost containment and physician efficiency benefits.

As a physician who has previously experienced the many benefits providers and patients receive through the use of electronic prescriptions, I encourage you to not allow this bill to derail the progress that has resulted from adoption of this technology.

Thank you for your consideration of these comments on this important topic.

Michael Atwood, MD
Chief Medical Officer BCBSKS

GACHES, BRADEN & ASSOCIATES
Government Relations & Association Management

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Testimony of Kansas Independent Pharmacy Service Corporation
In opposition to Senate Bill 99: Establishing the
Electronic Prescription Adoption Act
Submitted by Ron Gaches
Senate Public Health and Welfare Committee
Thursday, February 10, 2010

The Kansas Independent Pharmacy Service Corporation believes that electronic transmission of prescription orders will provide important efficiencies to the delivery of patient services and supports policy that encourages development of those services. However, we are in opposition to Senate Bill 99 because it appears to place significant limitations on the flow of information that can be provided the prescribing physician from the pharmacist that receives the prescription.

The possible interpretations of the language in Section 3 (b) (2), lines 26-31 of the bill are unclear and the language appears to be overly broad. Further, the language in Section 3 (d) permitting information about a plan's formulary appears to be unnecessarily restrictive.

State policy regarding the use of electronic prescriptions should encourage private sector innovation and not place undue burdens on the creativity, productivity or efficiency of the marketplace. Electronic prescription orders should not discourage the traditional collaborative roles that pharmacists and physicians share in providing the highest quality services in the most cost efficient and effective means possible for their patients. Senate Bill 99 appears to put limits on that traditional collaborative relationship or, at a minimum places barriers to maintaining that collaboration. We urge your opposition to the bill.

The Kansas Independent Pharmacy Service Corporation is a for profit corporation owned by Kansas independent community pharmacies from across the state of Kansas. As a service to its shareholders, the corporation advocates in favor of state and federal public policy that supports the delivery of professional, effective and efficient retail pharmacy services by independent community pharmacists.

Senate Public Health & Welfare
Date 2-10-2011
Attachment 6

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Kansas

phone: 785-296-4986
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www.agingkansas.org

Shawn Sullivan, Acting Secretary

Department on Aging

Sam Brownback, Governor

Senate Health and Public Welfare Committee
February 10, 2011

Sara Arif, Director of Public Affairs
Sara.arif@aging.ks.gov
785.296.6154
Opposition to SB 99

Madam Chairwoman and members of the committee, thank you for the opportunity to submit written testimony in opposition to SB 99. The Kansas Department on Aging promotes the independence, dignity and security of Kansas seniors.

The Department's concern with this bill is Section 3(b)(2). This would eliminate pop ups or instant messages that the prescribing agent would see when electronically prescribing a medication. This would mean that a tool to indicate a generic drug is available in lieu of a brand name drug would be illegal. This would increase costs to seniors in Kansas, many of whom are on multiple medications and a fixed income. The Department feels that seniors should have choices, including their medication; this bill would prohibit an educated choice.

The Kansas Department on Aging envisions communities that enable seniors to make decisions about their lives; this bill is directly contrary to that goal. Please feel free to email or call me if you have any questions or concerns.

S.B. 99 Would Stifle Development of E-prescribing and Conflicts with Federal Standards

- If Kansas were to adopt the requirements in this legislation, e-prescribing would not be feasible and would cease to operate – undermining the development of the system.
- State-by-state implementation of e-prescribing requirements would be counterproductive to national standards development progress.
    - Industry and technology experts have been working for several years through the National Council for Prescription Drug Programs (NCPDP), a not-for-profit standards development organization representing all sectors of the pharmacy services industry, to develop national standards for interoperability that will ensure a smooth transition to and greater adoption of health information technologies, including e-prescribing technologies.
- Standards created by this legislation have the potential to lead to unintended inconsistencies with federal standards, leaving providers with several different and confusing platforms for e-prescribing. Also, pushing the establishment of inconsistent standards may threaten the state's ability to receive federal grant money that is available to get electronic health record systems, including e-prescribing, up and running.

Increases Costs and Hurts Patients

- S.B. 99 restricts the transmission of key benefit information at the point of prescribing and will increase costs to patients. For example, this legislation would prohibit "instant messaging" to let the prescriber know that the generic version of a drug is available at a less expensive price to the patient.
- In addition, it would require the listing of all covered drugs and pharmacies, both in and out of network, with the harmful caveat that targeted information on preferred or lower cost options cannot be provided to the patient.
- In a time of rising health care costs, generic medications and less expensive pharmacy options can mean the difference between a patient taking their medication or going without critical care that they need. In 2009, the average price of a brand name prescription was $155 while the average price of a generic was $40.[1]
- S.B. 99 would unnecessarily limit patient access to generic medications and reduce the rate of generic substitution, thereby increasing overall prescription drug costs for patients, employers, third-party payers, and state healthcare programs.
- "Today, chronic care accounts for roughly 75 percent of the nation's health spending. More than 90 percent of prescriptions are filled by the chronically ill for whom prescription drugs provide the first line of defense."[2]
- In light of this, consumers are increasingly turning to mail-service pharmacies to save money and improve pharmacy care and this legislation would prevent consumers from being alerted by their prescriber of this safe and cost-effective option.
- Bottom line: this legislation will harm employers struggling to provide health care benefits to their employees and undermine the tools available that help them design a plan that assures the quality and safety of prescription drugs as well as controls utilization and cost.

[1] National Association of Chain Drug Stores, Industry Facts-at-a-Glance, available at http://nacds.org/wmspage.cfm?parm1=6536#pharmpricing (accessed January 24,2011).
[2] "Mail-service pharmacies: Increased savings, safety, and convenience for consumers," available at http://rxroundtable.org/2010/09/28/mail-service-pharmacies-increas (accessed January 24, 2010).

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Written testimony of Prime Therapeutics, LLC

SB 99 – Electronic Prescription Transmission Act

February 12, 2011

Madam Chairwoman and members of the Public Health and Welfare Committee:

Thank you for the opportunity to submit written testimony explaining the opposition of Prime Therapeutics to SB 99. Prime Therapeutics, LLC is a pharmaceutical benefits manager (PBM) owned by 12 non profit Blue Cross and Blue Shield companies. We manage pharmaceutical benefits for approximately 18 million covered lives.

Prime Therapeutics is fully committed to the continued implementation of electronic prescribing and other health information technologies. We believe that new technologies like e-prescribing are critically important to controlling future cost growth for payors and patients by streamlining processes that have been, or are currently, conducted in paper format. Prime participates in the National Counsel for Prescription Drug Plans (NCPDP), a not-for-profit standards development organization representing all sectors of the pharmacy services industry, to develop national standards for interoperability that will ensure a smooth transition to and greater adoption of health information technologies.

Our concerns with SB 99 are that the bill is a thinly veiled attempt by drug manufacturers to prevent PBMs and other payors, including state Medicaid programs, from using this technology to identify new cost savings opportunities such as generic substitution.

SB 99 limits the potential of e-prescribing technology to identify new cost-savings opportunities

Specifically, the bill restricts the transmission of key benefit information at the point of prescribing. The bill uses overly broad language that restricts "interference or limitations," and "influencing[ing] or attempt[ing] to influence the prescriber," which would prohibit the legitimate use of prescriber and patient decision support tools. Decision support tools relay important benefit information often through instant messages or "pop-ups" that alert the prescriber to more cost effective options when they are available. For example, alerting the provider that a medication can be obtained through a mail or specialty pharmacy at a reduced cost, or alerting the provider that a medication may be available in an equivalent generic form.

While masquerading as an e-prescribing "adoption" bill, much of the language is aimed at preserving brand drug market share against less expensive generic competitors by simpl

prescribe generics and comply with formulary design. Patients and payors are

savings from electronic prescribing. Prime analysis of e-prescribing savings with one of our Blue Plan partners found 5.9 percent greater generic utilization and 3 percent better formulary drug use among those whose prescription was submitted electronically. Improved generic and formulary preferred drug use led to an average cost savings of 17.3 percent for both the member and the payer.[1]

Prime and our Blue Cross partners have managed to continuously increase the value of the pharmacy benefit for policy holders through formulary management and capitalizing on generic opportunities. In 2009, the average cost of a brand name drug was $145.00; an increase of 9.8 percent from 2008. Conversely, the average cost of generic drugs decreased by 5.3 percent to $18. Generics are now available to treat conditions responsible for over 75 percent of health expenditures. This bill would significantly hamper the important progress we have made on moving to a more cost efficient health system through electronic prescribing.

The committee should also question Pfizer's motives and timing on proposing this legislation as their blockbuster drug Lipitor is set to face generic competition in November 2011.

In closing I would like to refer you to a letter Secretary Sebelius of the Health and Human Services Administration recently sent to state governors. In it she discusses the budget shortfalls many states are facing with respect to Medicaid programs. She encourages states to consider implementing several approaches to driving down the cost of drugs including increased use of generic drugs.[2] This bill would prevent both of those goals and lead to increased spending not just for the state Medicaid program, but for patients enrolled in commercially available health plans as well. Prime Therapeutics, LLC strongly opposes SB 99.

Thank You.

Stacey Fahrner

Vice President, Government Affairs

Prime Therapeutics, LLC

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[1] Chang C, Nguyen N, Smith A, Huynh D. Impact of electronic prescribing on outpatient prescription drug use and adherence in a network-model health plan. Presented at: Academy of Managed Care Pharmacy 22nd Annual Meeting and Showcase; April 9-10, 2010; San Diego.

[2] http://www.hhs.gov/news/press/2011pres/01/20110203c.html

Polsinelli Shughart PC

Memorandum

TO: The Honorable Vicki Schmidt, Chair
Senate Public Health and Welfare Committee

FROM: William W. Sneed, Legislative Counsel
America's Health Insurance Plans

SUBJECT: S.B. 99

DATE: February 10, 2011

Madame Chair, Members of the Committee: My name is Bill Sneed and I am Legislative Counsel for America's Health Insurance Plans ("AHIP"). AHIP is a trade association representing nearly 1,300 member companies providing health insurance coverage to more than two million Americans. Our member companies offer medical expense insurance, long-term care insurance, disability income insurance, dental insurance, supplemental insurance, stop-loss insurance and reinsurance to consumers, employers and public purchasers. Please accept this testimony as our opposition to S.B. 99, and our request that the Committee not act favorably on this bill.

Because my client interacts with all state legislatures, we are aware this bill has been introduced in numerous states. It purports to streamline the use of prescriptions throughout the state. However, we contend that passage of this bill would inhibit e-prescription adoption and utilization, as well as establish unfeasible prior authorization requirements in Kansas. We contend this bill in appropriate and unnecessary based on several points.

1. The requirement that prescriptions must be transmitted "with no intervening person having access to prescription drug order" found on page 2, lines 9-10, would prevent e-prescribing networks from continuing to transmit electronic prescriptions and related messages between prescribers and pharmacies. This prevention would most likely increase the cost that would directly be assessed to the individual procuring the prescription drugs.

2. Implementers of e-prescribing technologies agree with prescribers and pharmacies that electronic prior authorization ("EPA") process would be desirable and beneficial and has, with assistance from the federal Centers for Medicine and Medicaid Services ("CMS") made several good-faith efforts to create a standard for EPA. These efforts have not yet yielded satisfactory results, which means there is no viable EPA standard or methodology (operating in real time or otherwise) in the U.S. at this time. Thus, this bill would place requirements on technology companies and their end users that cannot be met technically, thereby shutting e-prescription communications down or substantially curtailing the communications.

3. Extensive requirements placed on the prior authorization process by this bill do not take into account the intricacies of the process and would be onerous, unwieldy and unfeasible for the technology companies that would have to comply with them. Passage of this bill would

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Attachment 10

compromise the prior authorization process and severely curtail its use as a tool to promote appropriate drug use. This would result in negative financial and operational effects on both private and public health plans, including Medicaid and other state-sponsored plans.

4. Passage of this bill in the states would likely create a 50-state patchwork of inconsistent e-prescribing standards that would compromise the efficiencies and interoperability of the emerging nationwide health information network.

5. The laws and regulations in Kansas currently are supportive of e-prescribing, so additional legislation is not needed and would be counterproductive for the reasons explained above.

Based upon the foregoing, we urge the Committee to not act favorably on S.B. 99. I am available for questions at the appropriate time.

Respectfully submitted,

William W. Sneed

WWS:kjb