

SESSION OF 2008

**SUPPLEMENTAL NOTE ON
SUBSTITUTE FOR SENATE BILL NO. 549**

As Amended by House Committee on
Health and Human Services

Brief*

Sub. for SB 549 would, if enacted, create a new statute that would be made a part of The Pharmacy Act of the State of Kansas and amend an existing statute that concerns nonresident pharmacies.

The new statute would require each pharmacy in Kansas to establish a continuous quality improvement program which is referenced in the bill as a CQI program. A CQI program would have to be in place no later than July 1, 2009. The purpose of the new program would be to assess errors in dispensing or furnishing prescription medications in order that the pharmacy may take appropriate action to prevent a recurrence of any errors.

Pursuant to the provisions of the substitute bill, reports, memoranda, proceedings, findings, or other records generated as part of a CQI program would be considered confidential and privileged peer review documents and not subject to discovery, subpoena, or other means of legal compulsion for their release and not admissible in any civil or administrative action other than an administrative proceeding initiated by the Board of Pharmacy. Nothing in the new statute is to be construed to prevent a patient from accessing such patient's prescription records, nor should the confidentiality provision be construed to affect the discoverability of records that are not generated or maintained solely as a part of a CQI program. No person in attendance at any meeting generated as part of a CQI program could be compelled to testify in any civil, criminal, or

*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>

administrative action as to discussions or decisions occurring as part of a CQI program, except in an administrative action initiated by the Board of Pharmacy. All reports and records generated as a part of a CQI program would be available for inspection by the Board of Pharmacy within a time period set by the Board through rules and regulations.

The new statute that would be created by the substitute bill would require the Board of Pharmacy, in conducting a disciplinary proceeding, to close that portion of the hearing in which any report, record, or testimony falling under the confidentiality provisions of the bill is to be disclosed and to exclude any person from the closed hearing except those listed in the bill. Further, the Board would be required to make any portions of the administrative record in which privileged matters are disclosed subject to a protective order prohibiting further disclosure and such records would not be subject to subpoena, discovery, or other means of legal compulsion. No person in attendance at a closed part of a disciplinary proceeding could be required to testify at a subsequent civil, criminal, or administrative proceeding.

Pursuant to the statute that would be created by the bill, the Board of Pharmacy could review any matters that are confidential or privileged under a CQI program, testimony, or reports in conducting a disciplinary proceeding, but the Board would be required to prove its findings with independently obtained testimony or records presented in an open Board meeting.

The bill would allow the Board of Pharmacy to establish requirements relating to the functions and record keeping of a pharmacy CQI program.

The bill would amend an existing statute to add new authority for the Board of Pharmacy to assess a civil fine against any nonresident pharmacy in an amount not exceeding \$5,000 for each violation when a nonresident pharmacy fails to supply information requested by the Board or to respond to an inquiry after being noticed by certified mail.

Background

SB 549, as introduced, was supported in Committee hearings by a member of the Board of Pharmacy and the Executive Director of the Board who requested an amendment to the original bill. In addition, a representative of the Kansas Pharmacists Association and a representative of the Kansas Pharmacy Coalition appeared in support of the bill and each offered proposed amendments. Proponents noted that “pharmacy” is not included in the provider groups that have statutorily recognized peer review procedures and protections for participants in the peer review process. The bill, according to the proponents, would require peer review programs and accord the same protections afforded other provider groups engaged in peer review.

Appearing as opponents were Legislative Counsel for Express Scripts and a representative of the Kansas Association for Justice. The former recommended an alternative to the provisions of the bill relating to nonresident pharmacies and the latter an amendment relating to the confidentiality of CQI proceedings the Association believes necessary to bring the bill into conformance with an opinion of the Kansas Supreme Court.

The substitute bill was presented as the work product of conferees who were asked to work together to come up with a compromise version of the bill. The pharmacy groups expressed support for the substitute bill.

Proponents appearing or providing written testimony in support of the substitute bill during hearings in the House Health and Human Services Committee included Senator Vicki Schmidt, the Board of Pharmacy, The Kansas Pharmacy Coalition, the Kansas Pharmacists Association and the National Association of Drug Stores.

A representative of the Kansas Association of Justice spoke in opposition to the substitute bill.

The House Committee on Health and Human Services made two amendments related to disciplinary hearings: they added members of the Board of Pharmacy to the list of parties who cannot be excluded from closed disciplinary proceedings where privileged matters may be disclosed, and they clarified that the board may review any matters that are confidential and privileged under a CQI program during a disciplinary hearing. The Committee also made a technical amendment.

The fiscal note on SB 549 indicates there would be no additional cost to the Board of Pharmacy from passage of the bill.