

SESSION OF 2008

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2578

As Amended by Senate Committee of the Whole

Brief*

HB 2578 would create the Utilization of Unused Medications Act. The bill would create a voluntary program by which adult care homes, mail service pharmacies, and medical care facilities may donate unused medications to be distributed by indigent health care clinics, federally qualified health centers, or community mental health centers to Kansas residents who are medically indigent. The bill would establish criteria regarding which medications could be accepted for this program. The criteria include:

- Medications must come from a controlled storage unit of the donating entity;
- Medications must be in one of the following conditions:
 - Original sealed unit dose packaging; or
 - Hermetically sealed by the pharmacy in tamper evident packaging;
- Medications must be non-expired;
- Donations may not be accepted if medication is believed to be tampered with;
- No controlled substances would be allowed; and
- Donations may include medications for a medical assistance program or drug product donations.

The qualifying center or clinic may charge up to 200 percent of the medicaid dispensing fee. To participate, the qualifying center or clinic would be required to:

*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>

- Comply with all applicable federal and state laws regarding the storage and distribution of medications;
- Inspect all medications prior to dispensing to determine they have not be adulterated;
- Dispense prescription medication only pursuant to a prescription issued by a practitioner; and
- Medications may not be sold, but may be transferred to another clinic or health center.

Entities exempt from liability (criminal or civil liability for injury other than death, for loss to person or property) or professional disciplinary action would include:

- The State Board of Pharmacy;
- The Kansas Department of Health and Environment;
- The Kansas Department on Aging;
- Any governmental entity or adult care home donating medications; and
- Any qualifying center or clinic that accepts or dispenses medications or employs a practitioner to accept or dispense the accepted or donated medications.

The bill would provide that the prescription drug manufacturer shall not, in the absence of bad faith or gross negligence, be subject to liability for failure to transfer or communicate product or consumer information, or the expiration date of a donated prescription drug. Additionally, the bill would provide that the person who donates the prescription medication would not be liable except if the injury or death is the direct result of a willful, wanton, malicious, or intentional misconduct by the individual.

The Board of Pharmacy would establish and implement the program and provide technical assistance to entities who wish to participate. The bill would require the Board to adopt rules and regulations by December 1, 2008 to implement the Act.

Further, the bill would require the Kansas Department of Health and Environment to maintain records of participation, including number of facilities donating medications, recipient locations, amounts of medications received, and the number of clients served. Additionally, the bill specifically would exclude any drug purchased with Medicaid Title XIX or Title XXI funding from being used for this program.

Additionally, the bill would amend KSA 2007 Supp. 75-7427 regarding the Office of the Inspector General of the Kansas Health Policy Authority. The would amend the entity to whom the Inspector General reports bill from the Executive Director of the Kansas Health Policy Authority to the Kansas Health Policy Authority. The bill would be effective upon publication in the *Kansas Register*.

Background

The House Appropriations Committee amended the bill to clarify that pharmacist-sealed prescriptions would be eligible to be donated to the program in addition to manufacturer-sealed prescriptions. Additionally, the House Committee amended the bill to exclude all medications purchased with Medicaid funding. Representative Kay Wolf testified in support of the bill. In addition, representatives from the Kansas Department on Aging; the Kansas Health Policy Authority; the Kansas Department of Health and Environment; the Kansas Association of Homes and Services for the Aging; the Kansas Health Care Association; the Kansas Area Agencies on Aging Association; the Marion Clinic; the Johnson County Area Agency on Aging; the Kansas Association for the Medically Underserved; AARP Kansas; Kansas Advocates for Better Care; Senior Services, Inc. of Wichita; Mother Mary Anne Clinic; Caritas Clinics, Inc.; and Health Partnership Clinic of Johnson County presented testimony in support of the bill.

The Senate Ways and Means Committee amended the bill to permit community mental health centers to be a qualified entity to distribute donated prescriptions. Additionally, the

Senate Committee expanded the definition of donating entities to include mail service pharmacies and medical care facilities in addition to adult care homes. The Senate Committee also included language allowing hermetically sealed prescriptions in tamper evident packaging to be donated. The Senate Ways and Means Committee also amended the bill to include 2008 SB 456, in its entirety, regarding the Office of the Inspector General. Other amendments were technical in nature. Representative Kay Wolf appeared before the Senate Committee in support of the bill. In addition, the Senate Committee received testimony in support of the bill from representatives of the following: Kansas Department on Aging; Kansas Department of Health and Environment; Kansas Health Policy Authority; Marion Clinic; Health Partnership Clinic of Johnson County; Kansas Advocates for Better Care; Kansas Association for the Medically Underserved; Kansas Area Agencies on Aging Association; United Health Group Pharmacy Solutions; Kansas Association of Homes and Services for the Aging; Kansas Pharmacists Association; Kansas State Nurses Association; AARP Kansas; Kansas Health Care Association; Claridge Court; Senior Services, Inc.; and Caritas Clinics, Inc. A representative of the Kansas Board of Pharmacy provided neutral testimony regarding the bill.

The Senate Committee of the Whole amended the bill by inserting language that the Board of Pharmacy shall establish and implement a program for the dispensing of unused medications. The previous language had directed the Department on Aging to adopt rules and regulations.

The fiscal note prepared by the Division of the Budget indicates that passage of the original bill would not have a fiscal impact on the Department on Aging or the Department of Health and Environment. Some unknown amount of additional staff time to provide technical assistance would be required of the Board of Pharmacy.