

MINUTES OF THE SENATE FINANCIAL INSTITUTIONS AND INSURANCE COMMITTEE

The meeting was called to order by Chairman Ruth Teichman at 9:30 A.M. on February 14, 2007 in Room 234-N of the Capitol.

All members were present except:  
Dennis Wilson- excused

Committee staff present:  
Melissa Calderwood, Kansas Legislative Research Department  
Terri Weber, Kansas Legislative Research Department  
Ken Wilke, Office of Revisor of Statutes  
Bev Beam, Committee Secretary

Conferees appearing before the committee:  
Gary Haulmark, CCPA; Brian Caswell, KPHA; Sam Boyajian, Independent Pharmacist; Jeff Denton, Independent Pharmacist; John Kollhoff, Independent Pharmacist; Bob Tomlinson, KID; Cindy Laubacher, Medco; Alan Horne, Caremark; Michael Harrold, Express Scripts; and Bill Sneed, AHIP

Others attending:  
See attached list.

The Chair called the meeting to order and welcomed everyone to the meeting.

Hearing on:

**SB 272 - concerning the Kansas Pharmacy Benefits Managers Act; establishing duties for pharmacy benefit managers; establishing penalties for violations of the act; amending K.S.A. 2006 Supp. 40-3821, 40-3822, 40-3824 and 40-3826 repealing the existing sections.**

Gary Haulmark, CCPA, testified in support of SB 272. Mr. Haulmark testified that pharmacy benefit managers are the largely unregulated drug middlemen who administer the prescription drug benefit portion of health insurance plans for private companies, unions and governments. He stated further that PBMs manage all aspects of the prescription drug benefit plan, including creating formularies of preferred medicines, negotiating with drug manufacturers for discounts on rebates, and negotiating with pharmacies to establish retail networks for dispensing drugs. The proposed legislation is based on the Unfair Prescription Drug Practices Act. At its heart, the proposed legislation will allow employers and consumers the opportunity to make better decisions about the purchase of prescription drugs, he said. (Attachment 1)

Brian Caswell, on behalf of Kansas Pharmacists Association testified in support of SB 272. Mr. Caswell testified that as a plan sponsor, one should have access to the true overall cost of a plan benefit. He further testified that all rebates that are derived from drug management should be transparent to that plan sponsor. Any means to try and hide or misrepresent those rebates would be doing harm to the plan sponsor. Any plan sponsor who would contract with a PBM probably does so with the intent that the PBM is working in the plan sponsors best interest. Therefore, one would expect that a PBM has a fiduciary duty to that plan sponsor. SB 272 does just that. It requires any PBM to disclose to its client, financial gains that it has secured through its relationship with the plan sponsor, especially that of formulary rebates and "Spread Pricing" with generics, he said. He also stated that it protects the PBM industry's proprietary information, he said.. It would not and should not increase healthcare or prescription management costs, unless the PBM industry chooses to do so. SB 272 increases honesty. (Attachment 2)

Sam Boyajian, RPH, testified in support of SB 272 stating that pharmacies have been dealing with PBM abuses for years. PBMs have hidden the different ways of procuring monies that should have either been passed to the consumer or never should have been available in the first place. He said lack of transparency in their business dealings has given PBMs carte blanche to fleece the prescription drug side of the healthcare system of hundreds of millions of dollars and led to countless lawsuits across the country. He said PBMs claim they contain costs and keep prescription drugs affordable. Where then are all the savings they claim to have made for employers and patients, he asked? (Attachment 3)

## CONTINUATION SHEET

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John Kollhoff, Pharmacist, testified in support of SB 272. Mr. Kollhoff started his testimony citing some recent high profile court cases involving PBMs. Mr. Kollhoff stated that the PBM industry has proven that they are not able to conduct business in a responsible manner without close oversight. He continued by stating that the big PBMs have shown repeatedly that they are unwilling to transact business openly and honestly with anyone, including the United States government, the states, my patients and your constituents. (Attachment 4)

Bob Tomlinson, Assistant Insurance Commissioner, testified as a neutral party. Mr. Tomlinson testified that a few states, including Maine, have enacted legislation regarding PBMs. Mr. Tomlinson said the National Association of Insurance Commissioners and National Conference of Insurance Legislators are presently studying the PBM issue. The 2006 Kansas legislation required PBMs to register with the Kansas Insurance Department. In order to make sure this legislation could be implemented, the pharmacists worked closely with the Department. Currently, the Insurance Department can administer the program, he said. He further stated the Insurance Department's main concern is with the transparency in the business relationships. (Attachment 5)

Cindy Laubacher, Senior Director, State Government Affairs, Medco Health Solutions, Inc., testified in opposition to SB 272. Ms. Laubacher testified that SB 272 mandates that PBMs transfer any benefit or payment for certain transactions to the "covered entity." If PBMs are going to be required by law to disgorge any profit that they might make in certain transactions such as substituting a less expensive generic drug for a more expensive brand-name prescription, then shouldn't all for-profit entities in the pharmaceutical distribution and reimbursement systems be required to do the same? She stated that at a time when both public and private health plans are struggling to stretch limited resources into meaningful health benefits, state and national policymakers should be focused on encouraging the use of innovative and effective cost control techniques. There is also evidence that proposals such as SB 272 will result in added costs for both public and private plans. Given documented evidence of the value that PBMs provide to their customers, and the significant costs associated with SB 272, Ms. Laubacher said Medco opposes this bill. (Attachment 6)

Allen Horne, Vice President, Government Relations, Caremark Rx, testified in opposition to SB 272. He stated that Caremark opposes SB 272 because the legislation mandates a fiduciary duty to the covered entity. The legislation requires the PBM to transfer any benefit or payment in full that it receives if a generic or lower cost drug is substituted for a higher cost drug. Also, the Federal Trade Commission has stated that disclosure of PBMs cost structure and revenues would hold PBMs to a standard that does not apply to other industries, he said. (Attachment 7)

Michael Harrold, Express Scripts, testified in opposition to SB 272. Mr. Harrold testified that the benefits PBMs bring to the health care system have been studied and documented by the Federal Trade Commission, U. S. General Accounting Office, Congressional Budget Office and the Centers for Medicare and Medicaid Services. He stated that Express Scripts opposes SB 272 as an unnecessary and costly level of regulation of PBMs. PBM activities already are regulated at both the state and federal level and this bill would impose an inappropriate regulatory standard that will prove unworkable and drive up the cost of prescription drug benefits. Mr. Harrold said PBMs administer prescription drug benefits for employers and health plans. Mr. Harrold said PBMs play an integral part in providing affordable prescription drug benefits to patients in Kansas. They also promote better patient care by using sophisticated management systems to identify and reduce medical errors, he said. (Attachment 8)

William Sneed, Legislative Counsel for America's Health Insurance Plans (AHIP), testified in opposition to SB 272. Mr. Sneed said that based on review of SB 272, AHIP believes it will not be in the best interest of Kansas citizens and will have the potential to dramatically increase the cost of drugs, thus increasing health insurance premiums. (Attachment 9)

Q & A followed testimony. The Chair closed the hearing on SB 272.

The meeting adjourned at 10:30 a.m.

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