

HB 2579 – Authorizing the board of emergency medical services to distribute non-prescription over-the-counter (OTC) medications.

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Opponent Testimony

Madam Chair Landwehr and members of the committee, thank you for the opportunity to provide testimony in opposition to HB 2579.

The Emergency Medical Services Board is the lead EMS agency in our state responsible for protecting the public through the effective oversight of all things EMS related in Kansas; this includes ambulance services, ambulances, EMS providers, and EMS educational entities. We have been tirelessly providing guidance, input, and support to our 170 EMS agencies across the state of Kansas as we remain in close and frequent contact with them to attempt to identify and address challenges as early as possible.

The Board stands opposed to the language within HB 2579 for several reasons, the most important being the additional language is unnecessary and asks to legislate a practice bystanders and laypersons can do today. Thereby creating and placing obstacles in the path of the EMS provider to be able to do what the general public can do today without the obstacles.

It is the Board's current stance the giving of an OTC medication to another individual does not need to be legislated. If a person needs ibuprofen or acetaminophen for a headache, an EMS provider should have the same flexibility to distribute one or both of those OTC medications as the general public. If a patient is exhibiting signs and symptoms of an opioid overdose, responds appropriately to the administration of naloxone, and then refuses further care and transportation, an EMS provider should have the same flexibility to distribute OTC naloxone to this individual as the general public.

The obstacles HB 2579 introduce to the EMS provider for this situation – the provider would need to demonstrate they had successfully completed an approved course of instruction, local specialized device training and competency validation, and then could only distribute if authorized by medical protocols or upon an order of a physician, physician assistant, advanced practice registered nurse, or professional nurse when direct communication is maintained and monitored. The general public has none of these obstacles, simply a request to give, a supply on hand, and them giving.

Further indication the language is unnecessary at this moment is the Kansas Legislature has empowered the Board with the appropriate tools to reach the same end and without legislation. The Board can, quite easily, generate a guidance document since they have a discretionary function to define unprofessional conduct. This action is scheduled to be considered at the Board's meeting on Friday, February 2nd. Within that guidance document, stating the administration of an OTC medication is not unprofessional conduct when specific conditions are met (medication is appropriate, labeled as OTC, for a clinical purpose, etc.). The additional conditions being included as EMS providers are recognized by the public as healthcare providers and should be held to that standard. The Board would be very open to including the two additional paragraphs from HB 2579 to address OTC products containing ephedrine and pseudoephedrine.

Additionally, there appears to be some concern that either the Board or its staff are going to target and pursue disciplinary action against EMS providers and ambulance services for the practice of distributing OTC medications and claiming it is the performance of an activity not authorized by statute. **This is an unsubstantiated concern.** The gratuitous giving of non-prescription items from an ambulance (gauze, band-aids, ice packs, etc.) has not been prosecuted as an unauthorized activity in the 35+ year history of the Board. However, the Board has pursued disciplinary action for EMS providers who have diverted prescription medications, or prescriptions marked specifically for prescription use only, from the ambulance service to a person or to themselves.

If there is a recommendation to proceed with the language within this bill, the Board requests the following balloon amendments be added to address items recognized for further clarification or as disconnects over the past 3 years' worth of meetings and discussions related to the authorized activities of the Emergency Medical Responder:

- Adding "acquisition of serial EKG rhythm strips if the primary care provider during transportation is a physician, physician assistant, advanced practice registered nurse, professional nurse, advanced emergency medical technician or paramedic;" as an authorized activity. This fixes a concern of a one and done approach afforded by subsection (a)(6) and places the guardrail to differentiate between the skill of acquisition and the practice of EKG monitoring.
- Deleting (a)(11) "intramuscular injections with auto-injector". It is duplicative with (12).

It is also the Board's current opinion this bill, if enacted, would create a statutory disconnect within the emergency opioid antagonist law – K.S.A. 65-16,127. A disconnect that could prove disastrous for naloxone leave-behind programs – programs designed for victims of an overdose who have responded appropriately to the administration of naloxone for the immediate concern, but refuse transportation or further care. The goal of these programs is, through distribution, to provide and place OTC emergency opioid antagonists in the hands of those having a demonstrated need to have this important safety measure for accidental overdoses.

K.S.A. 65-16,127 does not differentiate between medications approved for prescription usage and those approved for OTC usage, it simply references medications approved by the U.S. Food and Drug Administration to treat an opioid overdose. As OTC medications are approved by the U.S. Food and Drug Administration and they approved the first OTC emergency opioid antagonist medication on March 29, 2023, we would additionally ask if this bill is worked to address this potential disconnect and add "distribution" in K.S.A. 65-16,127 subsection (e) to clearly allow the practice of naloxone leave behind for first responders, scientists or technicians operating under a first response agency, or school nurses so they may utilize these programs without fear of unintentionally violating a state law.

Summary

HB 2579 is unnecessary and places obstacles in the path of EMS providers to do what the general public can do today without those obstacles.

The Legislature has granted the Emergency Medical Services Board the tools to effect a similar outcome and the Board is scheduled to address this matter at their meeting on Friday.

If there is a strong desire to proceed with the language of this bill, the following items be considered for balloon amendments or a substitute bill:

- Adding "acquisition of serial EKG rhythm strips if the primary care provider during transportation is a physician, physician assistant, advanced practice registered nurse, professional nurse, advanced emergency medical technician or paramedic;" as an authorized activity.
- Deleting (a)(11) "intramuscular injections with auto-injector".
- Adding K.S.A. 65-16,127 and adding "distribution" in subsection (e).

The Emergency Medical Services Board asks you to set aside HB 2579. The additional requests are necessary, but could easily be introduced through additional legislation. We appreciate your time and consideration.