

MINUTES OF THE PUBLIC HEALTH AND WELFARE COMMITTEE

The meeting was called to order by Chairman Vicki Schmidt at 1:00 p.m. on February 17, 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, Committee Assistant

Conferees appearing before the Committee:

Karen Braman, Kansas Health Information Exchange, Inc.
Jeff Ellis, Spencer Fane Britt Browne
Martie Ross, Spencer Fane Britt Browne
Tom Bell, Kansas Hospital Association
Jerry Slaughter, Kansas Medical Society
Pat Hubbell, Kansas Pharmacists Association
David Root, Medco Health Solutions, Inc., and Affiliates

Others attending:

See attached list.

The Chair asked for approval of the minutes for January 31, 2011, February 3, 2011, February 7, 2011, and February 8, 2011. Moved by Senator Kelsey, seconded by Senator Brungardt. The minutes were approved as submitted.

The Chair opened the hearing on **SB 141—Concerning the Department of Health and Environment, relating to school-located influenza vaccination programs.** This bill would require the Kansas Department of Health and Environment (KDHE) to apply for federal grants under the federal Patient Protection and Affordable Care Act to fund, promote, and expand school-located influenza vaccination programs to provide seasonal influenza vaccinations for school-age children. It would also require KDHE to provide community transformation grants, public health promotion outreach and education programs and would require that the KDHE website include information regarding federal grant opportunities available under the federal Act.

Dan Murray, speaking for MedImmune and Scott Brown who was unable to attend, briefly outlined what this legislation would accomplish and then stood for questions (Attachment #1). Written testimony also in favor of this legislation was provided the committee by Dr. Ellen Losew (Attachment #2) and Cathy Harding, Executive Director for the Kansas Association for the Medically Underserved (Attachment #3).

Dr. Robert Moser, Acting Secretary for the Department of Health and Environment, presented testimony in opposition to **SB 141**. He stated that his Agency has three areas of concern: (1) Mandating the application of funding would limit the agency's ability to prioritize other needs with potentially greater and longer lasting benefit to the State; (2) school-based vaccination programs, while having merit, are not the ideal model for child immunizations; and (3) the Agency does not yet have a full understanding of the requirements on states applying for the grants (Attachment #4).

There being no further conferees, the hearing on **SB 141** was closed.

The hearing on **SB 133—Health information; technology and exchange of health information** was opened by the Chair. This legislation would enact the Kansas Health Information Technology and Exchange Act. This would enact state privacy provisions similar to those contained in the Health Insurance Portability and Accountability Act of 1996 (HIPAA) to protect patient information held by and accessed through a Health Information Organization. The purpose is to harmonize state law with the HIPAA privacy rule in order to safeguard and protect the health information and facilitate the development and use of health information technology and exchange.

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Karen Braman, Chair, Kansas Information Exchange Board of Directors, stated that passage would provide the tools needed to establish policy necessary for the reliable and secure exchange of health information and create the legal clarity that will encourage health care providers to fully participate in the health care environment of the future ([Attachment #5](#)).

Jeffrey O. Ellis, Legal Work Group, noted that the group was comprised of 28 lawyers from around the state who were primarily engaged in representing health care providers or who served on the legal staff of state agencies that regulate the health care industry. This group then achieved a consensus which resulted in the proposed legislation ([Attachment #6](#)).

In favor of this legislation was Martie Ross, an attorney who specializes in health information law, was one of the participants in the Legal Work Group. She provided a detailed explanation of the Kansas Health Information Technology and Exchange Act (K-HITE) provisions, specifically stating that it would employ a five-part strategy: (1) harmonize Kansas law with HIPAA Privacy Rule; (2) adopt uniform rules regarding identification of personal representatives for health-related matters; (3) establish standards for approved HIOs; (4) provide individual notice and opportunity to opt out of disclosures to an HIO; and (5) amend the Uniform Electronic Transactions Act to include health-related transactions ([Attachment #7](#)).

Tom Bell, Kansas Hospital Association, believes this legislation would provide much needed recognition of new electronic health records and exchange technology, clarify rules around its secure use and articulate a patient's ability to access and control information ([Attachment #8](#)).

Representing the Kansas Medical Society, Jerry Slaughter stated that **SB 133** was a critical component of our state's effort to establish a secure and highly functional health information exchange ([Attachment #9](#)).

Submitting written testimony in support of this bill was Gary Robbins, Kansas Optometric Association ([Attachment #10](#)), Dr. Robert Moser, Acting Secretary, Kansas Department of Health and Environment ([Attachment #11](#)), Dennis Lauver, Salina Area Chamber of Commerce ([Attachment #12](#)), Catherine Davis, Kansas City Quality Improvement Consortium ([Attachment #13](#)), Kenneth C. Mishler, Kansas Foundation for Medical Care, Inc. ([Attachment #14](#)), Bob Williams, Kansas Association of Osteopathic Medicine ([Attachment #15](#)), Claudia Blackburn, Sedwick County Health Department ([Attachment #16](#)), Maren Turner, AARP ([Attachment #17](#)), Carolyn Gaughan, Kansas Academy of Family Physicians ([Attachment #18](#)), Ron Brown, Wichita Health Information Exchange ([Attachment #19](#)), Edie Snetten, Kansas Association of Local Health Departments ([Attachment #20](#)), and Michael F. Larkin, Kansas Pharmacists Association ([Attachment #21](#)).

There being no further conferees, the hearing on **SB 133** was closed.

The Chair then opened the hearing on **SB 138—Pharmacy audit integrity act**. This bill would create the Pharmacy Audit Integrity Act. The bill includes the procedures that an agency conducting a pharmacy audit on behalf of an insurance company or pharmacy benefits manager would be required to follow. The agency conducting the audit would be required to provide a copy of the final report, including any money recouped in the audit, to the plan sponsor and the State Board of Pharmacy. It would apply to contracts entered into, amended, extended, or renewed on or after January 1, 2011 but would not apply to any investigative audit that involves allegations of fraud or willful misrepresentation.

Pat Hubbell, member of the Board of Trustees of the Kansas Pharmacists Association stated that **SB 138** seeks common sense principles giving the audited pharmacy at least two weeks written notice before conducting an initial audit, limiting the period covered by the audit to two years, identifying times of high-volume prescriptions as off-limits for conducting an audit, and basing the audit on the actual overpayment or underpayment and not a projection based on the number of patients served having a similar diagnosis or on the number of similar order or refills for similar drugs ([Attachment #22](#)).

Robert Wenzl, Kansas Independent Pharmacy Service ([Attachment #23](#)) and Brian West ([Attachment #24](#)) submitted written testimony in favor of this bill.

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Speaking in opposition to the bill, David Root, Medco Health Solutions, Inc., and Affiliates stated he felt this legislation was unnecessary and would lead to increased opportunities for fraud, wasteful spending in health care (Attachment #25).

Allen Horne, CVS Caremark (Attachment #26), Marlee Carpenter, Kansas Association of Health Plans (Attachment #27), and Stacey Fahrner, Prime Therapeutics (Attachment #28) all presented written testimony in opposition to **SB 138**.

There being no further testimony, the hearing on **SB 138** was closed.

The next meeting is scheduled for February 21, 2011.

The meeting was adjourned at 2:30 p.m.