

SESSION OF 2022

SUPPLEMENTAL NOTE ON SENATE BILL NO. 168

As Amended by Senate Committee on Public
Health and Welfare

Brief*

SB 168, as amended, would amend the Prescription Monitoring Program Act (Act) to add to the list of information a dispenser may submit to the Prescription Monitoring Program (K-TRACS), allow the State Board of Pharmacy (Board) to charge fees, amend the list of individuals to whom the Board can provide K-TRACS data, amend how data is stored outside of K-TRACS, and add one member to the K-TRACS Advisory Committee (Committee).

The bill also would make technical amendments.

The bill would be in effect upon publication in the *Kansas Register*.

Definitions (Section 1)

The bill would add several new definitions to the Act and amend others, as follows:

- Add “audit trail information” to mean information produced regarding requests for K-TRACS data that the Board and Committee use to monitor compliance with the Act;
- Add “delegate” to mean:
 - A registered nurse, licensed practical nurse, respiratory therapist, emergency medical responder, paramedic, dental hygienist,

*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>

- pharmacy technician, or pharmacy intern who has registered for access to the K-TRACS database as an agent of a practitioner or pharmacist to request program data on behalf of the practitioner or pharmacist;
- A death investigator who has registered for limited access to the K-TRACS database as an agent of a medical examiner, coroner, or another person authorized under law to investigate or determine causes of death; or
 - An individual authorized to access the K-TRACS database by the Board;
- Amend “dispenser” to include a pharmacy as an entity that delivers a scheduled substance or drug of concern to an ultimate user;
 - Add “pharmacy” to mean a premises, laboratory, area, or other place currently registered with the Board where scheduled substances or drugs of concern are offered for sale or dispensed in the state; and
 - Add “program” to mean the prescription monitoring program.

Fees (Section 3)

The bill would amend the Act to allow the Board, in consultation with the Committee, to adopt rules and regulations necessary to establish and charge to each integrated entity an initial setup fee and an annual maintenance fee for the integration of K-TRACS data in any Board-approved electronic health record or pharmacy management system. The bill would direct the Board to determine, prior to the establishment or charge of any such fee, that any federal grants that may be expended for integration of program data in electronic health records or pharmacy management systems have been exhausted. The

bill would require all moneys collected through setup and annual maintenance fees to be remitted to the State Treasurer, who would be required to deposit the entire amount in the State Treasury to the credit of the State Board of Pharmacy Fee Fund.

K-TRACS Information (Section 2)

The bill would amend a provision in the Act requiring a dispenser to submit to the Board by electronic means information required by the Board regarding each prescription dispensed for scheduled substances and drugs of concern. The bill would add to the list of information a dispenser may submit, as required by the Board:

- The diagnosis code;
- The patient's species code; and
- The date the prescription was sold.

The bill would remove the Board's authorization to issue a waiver allowing a dispenser to submit prescription information by paper form or other means. The bill would amend the Act to allow the Board, in consultation with the Committee, to enable features and include additional information to enhance the K-TRACS database, including the:

- Date or fact of death;
- Dispensation or administration of emergency opioid antagonists, as defined in statute; and
- Data related to an overdose event.

K-TRACS Data (Section 4)

The bill would amend the Act to include audit trail information as privileged and confidential information not subject to subpoena or discovery in civil proceedings.

The bill would amend a provision in the Act authorizing the Board to provide data to Board personnel to specify the data provision would be for the purposes of the operation of K-TRACS, in addition to administration and enforcement.

The bill would amend the list of individuals to whom the Board is authorized to provide K-TRACS data to include:

- Medicaid practitioners;
- Persons operating a practitioner- or pharmacist-impaired provider program for the purpose of reviewing drugs dispensed to a practitioner or pharmacist enrolled in K-TRACS;
- Delegates of the following individuals currently authorized by the Act:
 - Individuals authorized to prescribe or dispense scheduled substances and drugs of concern for the purpose of providing medical or pharmaceutical care for their patients and when an individual is obtaining prescriptions in a manner that appears to be misuse, abuse, or diversion of such substances or drugs; and
 - Medical examiners, coroners, or other individuals authorized under law to investigate or determine cause of death;
- Individuals or organizations notified by the Committee;

- Practitioners or pharmacists conducting research approved by an institutional review board who have obtained patient consent for the release of program data; and
- A state-established overdose facility review board.

Database Access Qualifications

The bill would require an individual registered for access to the K-TRACS database to notify the Board in writing within 30 calendar days of any action that would disqualify the individual from being authorized to receive K-TRACS data.

The bill would require the State Board of Healing Arts, State Board of Nursing, Kansas Dental Board, and Board of Examiners in Optometry to notify the Board in writing within 30 calendar days of any denial, suspension, revocation, or other administrative limitation of a practitioner's license or registration that would disqualify the practitioner from being authorized to receive K-TRACS data.

The bill would require a practitioner or pharmacist to notify the Board in writing within 30 calendar days of any action that would disqualify a delegate from being authorized to receive program data on behalf of the practitioner or pharmacist.

Data Reviews

The bill would authorize the Committee to notify the Disability and Behavioral Health Services section of the Kansas Department for Aging and Disability Services for the purpose of offering confidential treatment services if a Committee review of K-TRACS data indicates an individual may be obtaining prescriptions in a manner that may represent misuse or abuse of scheduled substances and drugs of concern and the review does not identify a recent

prescriber as a point of contact for potential clinical intervention.

The bill would replace the term “controlled” substances with “scheduled” substances in the provisions of the Act relating to the Committee review of K-TRACS data.

The bill would require the Committee, if a review of information appears to indicate K-TRACS data have been accessed or used in violation of state or federal law, to determine whether a report to the professional licensing, certification, or regulatory agencies charged with administrative oversight of those individuals engaged in prescribing or dispensing of scheduled substances and drugs of concern is warranted and authorize the Committee to make such a report.

Data Authorizations

The bill would authorize the Board to provide a medical care facility with its K-TRACS data for statistical research or education purposes after removing information that could be used to identify individual practitioners or individuals who received prescriptions from dispensers.

The bill would authorize the Board to block any user’s access to the K-TRACS database if the Board has reason to believe access to the data is or may be used by such user in violation of state or federal law.

Information Retention and Storage (Section 5)

The bill would prohibit K-TRACS data from being stored outside of the database, with the following exceptions:

- Temporary storage necessary to deliver program data to electronic health records or pharmacy management systems approved by the Board;

- Retention of specific information or records related to an investigation or proceeding under administrative or criminal law;
- Program data provided to public or private entities for statistical, research, or educational purposes after removing information that could be used to identify individual practitioners, dispensers, patients, or persons who received prescriptions from dispensers; or
- Board retention of information for purposes of operation of K-TRACS and administration and enforcement of the Act or the Uniform Controlled Substances Act.

The bill would amend the Act to remove:

- A requirement the information and records be destroyed after five years; and
- An exception to the destruction requirement for records a law enforcement or oversight entity has requested be retained.

Advisory Committee Membership (Section 6)

The bill would increase the membership of the Committee from 9 to 10, adding one licensed advanced practice provider nominated by either the Board of Nursing or the State Board of Healing Arts.

Background

The bill was introduced by the Senate Committee on Ways and Means.

Senate Committee on Public Health and Welfare

In the Senate Committee hearing on February 10, 2022, a representative of the State Board of Pharmacy provided **proponent** testimony, stating the bill would provide necessary updates to K-TRACS statutes in light of technological changes over time. According to the representative of the Board, the bill would increase K-TRACS utilization and ease of use, enhance data security, enable more accurate patient information, and provide more opportunity for productive intervention when prescription abuse is suspected.

Written-only proponent testimony was provided by representatives of the Board of Nursing and Kansas Pharmacists Association.

The Kansas Department of Health and Environment Division of Health Care Finance (KDHE-HCF) provided neutral testimony.

Written-only neutral testimony was provided by the Kansas Association of Osteopathic Medicine.

No other testimony was provided.

The Senate Committee amended the bill to direct the Board to determine, prior to the establishment or charge of any setup or maintenance fee, that any federal grants that may be expended for integration of program data in electronic health records or pharmacy management systems have been exhausted.

The Senate Committee also amended the bill, at the request of the Board, to add the patient's species code and the date the prescription was sold to the list of information a dispenser submits to the Board regarding each prescription dispensed for scheduled substances and drugs of concern.

The Senate Committee also amended the bill, at the request of KDHE-HCF, to add Medicaid practitioners to the list of individuals to whom the Board is authorized to provide K-TRACS data.

Fiscal Information

According to the fiscal note prepared by the Division of the Budget on the bill as introduced, the Board indicates enactment of the bill would have no fiscal effect on the Board's expenditures as Committee members are not paid and meetings are held electronically. The Board states any K-TRACS changes resulting from enactment of the bill would be managed with existing staff. The Board indicates the bill could create an opportunity for further federal grant funding. The Board states it could implement a fee-for-service integration component if and when federal grant funds are no longer available for the integration program. Currently, the integration program is funded by a federal grant from KDHE through August 2022.

The Board recommends creating a fee-based structure for participants in the integration program, which could be activated if grant funding opportunities no longer continue. The Board proposes structuring these costs in a tiered system based on the facility type (pharmacy, physician clinic, hospital, or health system) and the number of users or utilization level at the facility. The Board states this approach would ensure that costs would be manageable for all facilities and not act as a deterrent for use of this K-TRACS feature. Additionally, the Board indicates traditional K-TRACS software would remain available to prescribers and pharmacists free of charge. Based on the current number of facilities voluntarily participating in the INTEGRx8 program, the Board estimates the facility cost would likely range from \$500 to \$3,000 per year. The Board would provide the exact costs through administrative rules and regulations in consultation with stakeholders and the Committee. Revenue would be deposited into the State Board of Pharmacy Fee

Fund, from which expenditures would be paid. Integration costs are estimated to be \$814,113 for FY 2022 and \$831,996 for FY 2023.

The State Board of Nursing indicates enactment of the bill would have a negligible fiscal effect on expenditures of that agency. The State Board of Examiners in Optometry, the Board of Healing Arts, and the Dental Board indicate enactment of the bill would have no fiscal effect on the entities, respectively. Any fiscal effect associated with the bill is not reflected in *The FY 2023 Governor's Budget Report*.

Prescription Monitoring Program Act; prescription monitoring program; State Board of Pharmacy; State Board of Pharmacy Fee Fund