

February 2, 2012

The Honorable Vicki Schmidt, Chairperson
Senate Committee on Public Health and Welfare
Statehouse, Room 552-S
Topeka, Kansas 66612

Dear Senator Schmidt:

SUBJECT: Fiscal Note for SB 328 by Senate Committee on Public Health and Welfare

In accordance with KSA 75-3715a, the following fiscal note concerning SB 328 is respectfully submitted to your committee.

SB 328 would amend the Kansas Pharmacy Act to clarify the definition of an “electronic prescription” and provide a clear distinction between “electronic transmissions” and “facsimile transmissions.” An electronic prescription is defined in the bill as an electronically prepared prescription that is authorized and transmitted from the prescriber to the pharmacy by means of electronic transmission. An electronic transmission is defined in the bill as the transmission of an electronic prescription, formatted as an electronic data file, from a practitioner's electronic prescription application to a pharmacy's computer, where the data file is imported into the pharmacy prescription application. A facsimile or fax transmission is defined in the bill as the transmission of a digital image of a prescription from the prescriber or the prescriber's agent to the pharmacy. A facsimile transmission would include an electronic or written prescription transmitted from a prescriber's fax machine or electronic prescription application to a pharmacy's fax machine, computer, or printer.

The bill would require electronic prescriptions to be retained electronically for five years from the date of their creation or receipt; be readily retrievable from all other records; and easily rendered into a format a person can read. Paper, oral, and facsimile prescriptions would be required to be maintained as a hard copy for five years at the registered location. The definition of pharmacist would be modified to mean any “natural” person licensed to practice pharmacy in Kansas. Pharmacist interns would be required to be:

1. A student currently enrolled in an accredited pharmacy program;
2. A graduate of an accredited pharmacy program serving an internship; or
3. A graduate of a pharmacy program located outside of the United States which is not accredited and who has successfully passed equivalency examinations approved by the Board of Pharmacy.

SB 328 would allow electronic transmission of prescriptions for controlled substances. The bill would require that a valid prescription order be based on a valid patient-prescriber relationship. The bill would require pharmacists to exercise professional judgment regarding the accuracy, validity, and authenticity of any prescription order consistent with federal and state laws and rules and regulations and take adequate measures to guard against the diversion of prescription drugs and controlled substances through prescription forgeries. The bill would require a prescriber to:

1. Ensure that the first and last names and title of the transmitting agent are included in the order prior to authorizing the agent to transmit a prescription order orally, by facsimile transmission, or by electronic transmission;
2. Manually or electronically sign all new prescription orders;
3. Manually sign any prescriptions for controlled substances prior to transmitting the prescription and prior to the prescription being delivered to the patient;
4. Direct the authorization of any refill, renewal, or continuation of an existing drug therapy; and
5. Sign any prescription order for a refill or renewal if it differs in any manner from the original order.

An electronically prepared prescription would be prohibited from being electronically transmitted to the pharmacy if the prescription was printed prior to electronic transmission. A prescriber's signature would not be required on refill requests if a transmission is completed by the prescriber's agent and the agent's first and last names and title are included. Only a pharmacist, a pharmacist intern, or a certified pharmacy technician would be authorized to receive a new prescription order. A registered pharmacy technician would also be allowed to receive a refill or renewal order from a prescriber or transmitting agent with the authorization of a supervising pharmacist.

The pharmacist would be required to ensure that the prescription order has been issued for a legitimate medical purpose by an authorized prescriber acting in the usual course of the prescriber's professional practice. The pharmacist would be prohibited from dispensing a prescription drug if the pharmacist knows or should have known that the prescription was issued solely on the basis of an internet-based questionnaire, an internet-based consultation, or a telephonic consultation and without a valid preexisting patient-practitioner relationship.

The bill would clarify that a refill is one or more dispensings of a prescription drug or device that results in the patient's receipt of the quantity authorized by the prescriber for a single fill as indicated on the prescription order. The bill would authorize no more than 12 refills within 18 months following the date on which a prescription is issued if it is not a controlled substance and no more than five refills within six months following the date on which the prescription is issued for a schedule III, IV, or V controlled substance.

The Honorable Vicki Schmidt, Chairperson

February 2, 2012

Page 3—328

SB 328 would remove the requirements that the Board make certain findings before designating a schedule I controlled substance as a prescription substance, to include the following:

1. That the schedule I controlled substance has an accepted medical use in treatment in the United States;
2. That the public health will benefit by the designation of the substance as a schedule I designated prescription substance; and
3. That the substance may be sold lawfully under federal law with a prescription.

The bill would make various other technical corrections and clarifications.

The Board of Pharmacy indicates that enactment of SB 328 would have no fiscal effect on its operations.

Sincerely,

A handwritten signature in black ink, appearing to read "Steven J. Anderson".

Steven J. Anderson, CPA, MBA
Director of the Budget

cc: Debra Billingsley, Pharmacy