

## MINUTES OF THE SENATE FINANCIAL INSTITUTIONS AND INSURANCE COMMITTEE

The meeting was called to order by Vice Chairman, Senator David Wysong, at 9:30 A.M. on February 20, 2006 in Room 234-N of the Capitol.

All members were present.

## 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:

Brad Smoot, American Insurance Assn.  
John L. Kiefhaber, Kansas Pharmacists Assn.  
Brian Caswell, R.Ph.  
Bill Sneed, Express Scripps

## Others attending:

See attached list.

The Vice Chair asked for approval of the minutes of February 7, 8, 9, 13 and 14. Senator Steineger so moved. Senator Schmidt seconded. Motion passed.

**Hearing on:**

**(SB 539)** - concerning casualty insurance companies; relating to certain requirements regarding filing rates, forms and premiums

Melissa Calderwood gave an overview. Miss Calderwood said in part that K.S.A. 2005 Supp. 40-216 is hereby amended to read as follows: (1) No insurance company shall hereafter transact business in this state until certified copies of its charter and amendments thereto shall have been filed with and approved by the commissioner of insurance. A copy of the bylaws and amendments thereto of insurance companies organized under the laws of this state shall also be filed with and approved by the commissioner of insurance. The commissioner may also require the filing of such other documents and papers as are necessary to determine compliance with the laws of this state.

She continued that (2) Except for contracts pertaining to large risks as defined in K.S.A. 40-955(I), and amendments thereto, which are exempt from the filing requirements of this section, each contract of insurance or indemnity issued or delivered in this state shall be effective on filing, or any subsequent date selected by the insurer, unless the commissioner disapproves such contract of insurance within 30 days after filing because the rates are determined to be inadequate, excessive, unfairly discriminatory or otherwise fail to meet the requirements of this act.

The Chair arrived at the meeting and called Brad Smoot, American Insurance Association, to testify as a proponent of **(SB 539)**. Mr. Smoot said Kansas has long been a “prior approval” state, meaning that insurance rates and policy forms had to be approved by the Kansas Insurance Department before they could be used by insurers, agents and customers. He said historically, prior approval meant long delays in bringing new rates or forms to Kansas commercial and personal lines customers. In 1999, then-commissioner, Kathleen Sebelius, brought the legislature a proposal to reduce some of these long-standing market barriers. That legislation removed prior approval of rates for commercial insurance products, moving them to a “file and use” process, he said. Large commercial risks were exempted from any rate filing requirement. These modest reforms have worked well and it is time to consider further modernizations, he said.

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Mr. Smoot continued that it has been eight years since the legislature updated the insurance regulatory environment. We think it's time to consider making some of the changes that many of our sister states have adopted, including neighboring states of Colorado, Nebraska, Missouri and Oklahoma. **(SB 539)** points us in that direction, he said. (Attachment 1)

Submitting written testimony in opposition to (SB 539) was Larry Magill, KAIA. (Attachment 2)

The Chair closed the hearing on **(SB 539)** and opened the hearing on **(SB 547)** An act enacting the pharmacy benefits manager registration act.

The Chair asked Melissa Calderwood for an overview of **(SB 547)**. She stated that this act would apply to any pharmacy benefits manager that provides claims processing services, other prescription drug or device services, or both, to covered persons who are residents of this state.

She said if any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

The Chair asked John L. Kiefhaber, Executive Director of the Kansas Pharmacists' Association for his testimony. Mr. Kiefhaber said this new legislation is an important addition to the Kansas Insurance Department's options for identifying out-of-state companies that are serving prescription drug beneficiaries throughout the state. He said members of KphA wholeheartedly support this measure as a means of assisting the Insurance Department in its efforts to answer consumers questions and complaints concerning prescription drug services.

He said most prescription drugs in Kansas, as in the nation, are partially paid for by private insurance plans or government programs such as Medicare and Medicaid. In order to deliver the claims processing and utilization control aspects of these coverage programs employers and government agencies often contract with prescription benefit managers to handle the delivery of benefits, from the wholesale purchase of the drug products to the claims processing of orders at the pharmacy. In Kansas, most of those benefits are administered by a handful of PBMs. Most of those companies are also contracted to deliver services under the new Medicare Part D drug benefit and could be covered by legislation recently approved by this committee and the full senate to require registration by Prescription Drug Plans. (Attachment 3)

Mr. Kiefhaber then introduced Brian Caswell, Rph, owner of Wolkar Drug in Baxter Springs, and immediate past president of KphA.

Mr. Caswell said since graduating from KU he has witnessed the ever-changing world of pharmaceutical care in which the insurance industry has become increasingly more involved with payment of services and drug therapy selection. During this evolutionary period of healthcare, an arm of the insurance industry began to market itself to major insurance carriers. This new business entity offered to streamline and manage the cost of prescription drugs for these insurance carriers. Pharmacy benefit managers' key involvement was to contract with pharmacy providers for a discount fee and manage the claims as they were processed. With prescription drug usage on the rise and the predominant use of paper claims, it seemed to be a great idea for cost containment and efficiency. In fact, with more and more pharmacies becoming computerized, the PBM industry tailored their business practice to utilize the technology to eliminate paper claims and gather more prescription data. This allowed them to increase their own efficiency and to collect specific patient demographic information along with physician information, drug usage, pricing and other data to use at their own discretion. Today, with pharmacy cooperation, a prescription can now be adjudicated within a matter of a few seconds.

Mr. Caswell said with increased oversight of prescription drug coverage for over 200 million Americans, the PBM industry has become the face of the insurance industry in terms of prescription benefits. Many patients who face the looming specter of a PBM chosen drug over the prescription choice of a physician, do so with the idea that it is their insurance that is making the choice rather than a sub-contracted company. Many pharmacists, physicians, nurses and patients will tell you that this scenario is becoming increasingly more

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prevalent in healthcare today. Drug selection, along with therapy management, is now in the hands of people outside of their healthcare team. (Attachment 4)

Senator Brownlee said Mr. Caswell was basically describing a middleman, so if the insurance company had done their job better managing their situation, we wouldn't need these middle guys because if we are trying to cut the costs of prescriptions why would we need these middle guys.

Mr. Caswell said that is a good question. As we have gone through this period of 25 to 30 years when the PBM industry has been around, at first it began as just an adjudication process. They more or less stepped in and said we will process these claims. In the past, the insurance industry was inundated with tons of paperwork. As pharmacies became more computerized, the idea was OK -- is there a way we can streamline that process. Can we take the electronic process of computer entry for the prescription and transfer it over so we can eliminate the paper claims and speed up the process and that actually is probably light years ahead of the rest of the healthcare industry. That was OK -- that was wonderful. But what happened in the 90's as the PBM industry was not being extremely profitable and PBM after PBM was sold off as a loss, the idea of rebates and formulary usage came up, and suddenly money started flowing in. So now we've seen about 15 years of that sort of business practice and it's become more and more constricted to the patients where they have fewer choices, less access. Patients don't get to go where they want to go to get their prescriptions filled, for instance, and many times they are confused as to what their co-pays are supposed to be.

Mr. Caswell said (**SB 547**) is a step in the right direction for the critical need of giving Kansas consumers the ability to balance out what would otherwise be an imbalance within our healthcare system. (**SB 547**) does nothing more than request a PBM operating in the state of Kansas to register with the Kansas Insurance Commissioner's office. By doing so, it will give the Insurance Commissioner the ability to locate and investigate a PBM who has had a grievance filed against it by a Kansas consumer. He said (**SB 547**) is also necessary in order to keep a fair and balanced approach to our healthcare system.

The Chair asked Bill Sneed, Legislative Counsel, Express Scripts, for his testimony. Mr. Sneed thanked the chair for allowing him to appear before the committee and said based upon their review, would respectfully request that the Committee not act favorably on (**SB 547**). (Attachment 5)

The Chair asked that both sides sit down together to see what they can work out and bring the bill back on Wednesday.

The Chair closed the hearing on (**SB 547**).

### **Final Action**

(**SB 264**) - concerning municipalities; relating to depositories for public funds

The Chair asked for comments from the committee. Senator Wilson said this bill is a very good compromise for cities and counties and government agencies to be able to get a better return on their investment. I think this protects the smaller banks in communities throughout Kansas and doesn't change a lot where there is not brick and mortar. I appreciate the compromise and hope the committee finds that we can pass out Substitute Bill for (**SB 264**).

Ken Wilke said (**SB 264**) as amended will become a substitute bill. Senator Wilson moved to pass out substitute for (**SB 264**) as amended favorable for passage. Senator Brownlee seconded. Motion passed.

Meeting adjourned at 10:30 a.m.