

SESSION OF 2022

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2253

As Amended by Senate Committee on Public
Health and Welfare

Brief*

HB 2253, as amended, would amend provisions of the Prescription Monitoring Program Act (Act). The bill would add to the list of information a dispenser may submit to the Prescription Monitoring Program (K-TRACS), amend the list of individuals who may request and receive data from K-TRACS, amend how data is stored outside of K-TRACS, and add one member to the K-TRACS Advisory Committee (Committee) for a total of ten members.

The bill would also make technical amendments.

Definitions (Section 1)

The bill would add 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 State Board of Pharmacy (Board) and the 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, pharmacy technician, or pharmacy intern who has registered for access to the K-TRACS

*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>

- database as an agent of a practitioner or pharmacist;
- A death investigator who has registered for limited access to K-TRACS 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 database by the Board in rules and regulations;
- 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.

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 also would remove the Board's authority to issue a waiver to a dispenser to allow submission of data by paper or other non-electronic means.

The bill would authorize the Board to enable features and include additional information in the database, including:

- The date or fact of death;
- The dispensation or administration of emergency opioid antagonists, as defined in statute; and
- The data related to an overdose event.

K-TRACS Data (Section 3)

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 expand the list of individuals who may request and receive data from K-TRACS to include:

- Practitioners, as designated representatives from the Kansas Department of Health and Environment (KDHE) regarding authorized Medicaid program recipients;
- Individuals 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 with patient consent for the release of program data; and
- An overdose fatality review board established by the State of Kansas.

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, 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 a practitioner from being authorized to receive K-TRACS data.

The bill would require a practitioner or pharmacist to notify the Board within 30 calendar days of any action that would disqualify a delegate from being authorized to receive program data on behalf of a 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 (KDADS) 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 has been accessed or used in violation of state or federal law, to determine whether a report to the board overseeing the license of such individual is warranted and would authorize the Committee to make such report.

Data Authorizations

The bill would authorize the Board to provide K-TRACS data to medical care facilities for statistical, research, or educational purposes if all identifying information is removed.

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 4)

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 a criminal or administrative investigation or proceeding;
- 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 to be retained.

K-TRACS Advisory Committee Membership (Section 5)

The bill would expand the membership of the Committee to a total of ten members by adding one member who is a 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 House Committee on Social Services Budget at the request of Representative Carpenter.

[*Note:* A similar bill, SB 168, was introduced in the Senate.]

House Committee on Social Services Budget

In the House Committee hearing on March 9, 2022, **proponent** testimony was provided by representatives from the Board, Board of Nursing, Kansas Hospital Association, and Kansas Medical Society. The proponents generally spoke to the updates to K-TRACS, data sharing guidelines, and funding. According to the representative of the Board, the bill would increase K-TRACS utilization and ease of use, enhance data security, and enable more accurate patient information.

Neutral testimony was provided by representatives of the Kansas Association of Osteopathic Medicine, Kansas Optometric Association, and KDHE.

No other testimony was provided.

The House Committee amended the bill to:

- Add or amend definitions for “audit trail information,” “delegate,” “pharmacy,” and “program”;
- Expand K-TRACS data requirements to include the diagnostic code, species code, and the date the prescription was sold;
- Delete the fees for an initial set up and annual maintenance for the integration of K-TRACS;

- Expand the list of persons who may request and receive data from K-TRACS;
- Authorize the Committee to notify KDADS for the purpose of offering confidential treatment services; and
- Expand the membership of the Committee by one member.

Senate Committee on Public Health and Welfare

The Senate Committee did not hold a hearing on the bill but did hold a hearing on the companion bill, SB 168, on February 10, 2022.

On March 23, 2022, the Senate Committee amended the bill to change the effective date from upon publication in the *Kansas Register* to upon publication in the statute book.

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, and 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. [*Note:* The House Committee removed this provision of the bill.] 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 made. Integration costs are estimated to be \$814,113 for FY 2022 and \$831,996 for FY 2023.

The Board of Nursing indicates enactment of the bill would have a negligible fiscal effect on expenditures of that agency. The Board of Examiners in Optometry, the State Board of Healing Arts, and the Kansas Dental Board indicate enactment of the bill would have no fiscal effect on the entities.

Any fiscal effect associated with the bill is not reflected in *The FY 2022 Governor's Budget Report*.

K-TRACS; Prescription Monitoring Program Act; prescription monitoring program; State Board of Pharmacy; State Board of Pharmacy Fee Fund; pharmacy; prescriptions