Approved: March 11, 2011

MINUTES OF THE HEALTH AND HUMAN SERVICES COMMITTEE

The meeting was called to order by Chairperson Landwehr at 1:30 p.m. on February 14, 2011, in Room 784 of the Docking State Office Building.

All members were present except:
Representative Terry Calloway - excused

Committee staff present:
Norm Furse, Office of the Revisor of Statutes
Martha Dorsey, Kansas Legislative Research Department
Dorothy Noblit, Kansas Legislative Research Department
Jay Hall, Kansas Legislative Research Department
Debbie Bartuccio, Committee Assistant

Conferees appearing before the Committee:
Cathy Harding, Executive Director, Kansas Association for the Medically Underserved (Attachment 1 and Attachment 2)
Jason Wesco, Community Health Center of Southeast Kansas (Attachment 3)
Ron Hein, Kansas Physical Therapy Association (Attachment 5)
Mark Dwyer, Physical Therapist (Attachment 6)
Pam Palmer, Kansas Physical Therapists, Association (Attachment 7)
Glennis Svandal, Patient (Attachment 8)
Lisa Stehno-Bittel, Department of Physical Therapy and Rehabilitation Services (Attachment 9)
Jaime McAttee, MD, Kansas Orthopaedic Society (Attachment 10)
Dan Morin, Kansas Medical Society (Attachment 11)
Ron Gaches, Occupational Therapy Association (Attachment 12)

Others attending:
See attached list.

HB 2182 – Concerning mail service pharmacies.

Chairperson Landwehr opened the hearing on the bill.

Cathy Harding, Executive Director, Kansas Association for the Medically Underserved provided testimony in support of the bill. (Attachment 1) KAMU has been the Primary Care Association of Kansas for 22 years. As such, KAMU represents 39 primary care safety net clinics that all share the same mission of providing health care services without regard for the patients' ability to pay. KAMU and our members believe Kansas should be a state where all individuals have access to comprehensive, affordable and quality health care. Our 39 member Safety Net Clinics, along with their 26 satellite sites, provide Kansans a total of 65 access points.

We continue to celebrate and recognize the growth of the number of Kansans served by safety net clinics in Kansas over the years. In 2009 our 39 clinics provided care for over 223,000 underserved Kansans – a 31.6 % increase in patients in just two years (2007 – 2009). With the current economic climate in our state the number of individuals who are uninsured and underinsured will continue to rise. This demand for care has increased so much in just the past year that six new applications are expected for state funding this year through KDHE's Primary Care Grant Program, and the possibility of two more.

The bill is a continuation of an effort that began in 2008 with the passage of **HB 2578**, titled the "Unused Medications Act." This act allows adult care homes, mail service pharmacies and medical care facilities to donate unused medications to safety net clinics so they can distribute these medications to Kansans who are medically indigent. This program has been wildly successful. You will hear in later testimony from Jason Wesco more details about the specifics of the program.

The change we ask for today will allow other mail order pharmacies who are licensed in Kansas, but not located in Kansas, to donate unused medications if they so chose. Current law requires the mail order pharmacy to be physically located in Kansas. This bill strikes the words "located in the state" (page 1, line 25). This change will allow any mail order pharmacy who is licensed in Kansas to participate in the program.

The minutes of the Health and Human Services Committee at 1:30 p.m. on February 14, 2011, in Room 784 of the Docking State Office Building.

The balloon amendment (Attachment 2) shown below was reviewed with the committee by Mike Hutfles.

Balloon Amendment – HB 2182

65-1671. Same; criteria for accepting unused medications; dispensing: following criteria shall be used in accepting unused medications for use under the utilization of unused medications act:

(a) The medications shall have come from a controlled storage unit of a donating entity;

(b) only medications in their original or pharmacist sealed unit dose packaging or (~~hermetically sealed by the pharmacy~~) in tamper evident packaging, unit of use or sealed, unused injectables shall be accepted and dispensed pursuant to the utilization of unused medications act;

(c) expired medications shall not be accepted;

(d) a medication shall not be accepted or dispensed if the person accepting or dispensing the medication has reason to believe that the medication is adulterated;

(e) no controlled substances shall be accepted; and

(f) subject to the limitation specified in this section, unused medications dispensed for purposes of a medical assistance program or drug product donation program may be accepted and dispensed under the utilization of unused medications act.

Jason Wesco, Community Health Center of Southeast Kansas, provided testimony in support of the bill. (Attachment 3) The bill proposes to eliminate the requirement that a mail order pharmacy be physically located in Kansas in order to be eligible to donate medications to the Unused Medications Repository. Out-of-state mail order pharmacies would, however, be required to maintain an active Kansas pharmacy license.

The Unused Medications Act, passed in 2008, allows for long-term care organizations, medical facilities and mail order pharmacies to donate unused medications to Kansas safety-net providers who can then make these medications available at low or no cost to uninsured individuals with incomes under 200% of the Federal Poverty Level – the threshold many consider "low income." The Act allows for donations directly from any of the donating entities to any of the eligible recipient agencies. However, in order to improve program efficiency, the Kansas Department of Health and Environment's Bureau of Local and Rural Health funded a pilot project in 2009 to create a central repository where donations could be made and then redistributed to eligible entities (primary care clinics for the indigent, Community Health Centers and Community Mental Health Centers). My organization received funds through this pilot project and currently serves as the Unused Medications Repository.

To date, we have distributed medications with a retail value of approximately $5 million to twenty eligible organizations. We have seventeen donating entities enrolled in the program, though the overwhelming majority of unused medications have been donated by a single mail-order facility – Prescriptions Solutions in Overland Park. My organization employs pharmacists and pharmacy technicians that receive and inspect inventory, in some cases repackage and ship medications to eligible recipient organizations that then, in turn, make those medications available to their patients. This model is necessary because the donations we receive from Prescription Solutions are sizable and would overwhelm any single clinic's need or capacity to receive and process.

The current State investment in the program is $156,575 made though grants of $116,575 through KDHE and $40,000 though SRS. Opening the program to out-of-state mail order pharmacies, we believe, could greatly increase the volume and variety of unused medications available to Kansans. And while it is difficult to measure with any precision, we do believe that if only one other mail-order pharmacy donated with the same volume as Prescription Solutions that it would overwhelm our current capacity to accept, process and redistribute medications. We would therefore pursue additional resources to expand capacity,

either through the current KDHE Primary Care grant program, which includes funds specifically for pharmacy services, or through outside sources. Thank you.

Robert Stiles, Primary Care Director, KDHE, submitted written testimony only in support of the bill. (Attachment 4) He stated this bill proposes to strike language related to the physical location of a mail-service pharmacy eligible to donate medications through the Utilization of Unused Medications Act, while retaining the requirement that eligible mail-service pharmacies have Kansas licensure.

Currently, there is one mail-service pharmacy registered with the Kansas State Board of Pharmacy to donate unused medications, Prescription Solutions located in Overland Park, Kansas. Since June, 2009, Prescription Solutions has donated medications through the auspices of the Unused Medications Repository, a pilot project funded through the Community-Based Primary Care Clinic Program at KDHE, with additional funding this year from Social and Rehabilitative Services. The Repository allows eligible entities to donate medications through a central location. These medications are then made available to indigent health care clinics, Federally Qualified Health Centers, and Community Mental Health Centers for use with medically indigent patients. Since this Repository pilot began, more than $5 million dollars worth of medications (retail value) have been received by low-income, uninsured Kansans. Current funding for the program is $116,575 from KDHE and $40,000 from SRS.

Removing the requirement that eligible mail-services pharmacies be physically located in Kansas would allow other mail-service pharmacies with Kansas licensure to donate unused medications. The participation of Prescription Solutions in the Unused Medications Repository has been crucial to the Repository's success. It is hoped that this change in statute will result in participation by other mail-service pharmacies that are not currently eligible to donate medications.

There were no opponents or neutral testimony presented. The Chair gave the members the opportunity to ask questions and when all were answered the hearing was closed.

HB 2182 – Concerning mail service pharmacies.

The Chair proceeded to work the bill.

Representative Bethell made a motion to incorporate the requested amendment into the bill. The motion was seconded by Representative Hermanson. The motion carried.

Representative Bethell made a motion to pass out **HB 2182** favorably as amended. The motion was seconded by Representative Hermanson. The motion carried.

HB 2159 – Physical therapists evaluation and treatment of patients.

Chairperson Landwehr opened the hearing on the bill.

Ron Hein, representing the Kansas Physical Therapy Association, presented testimony in support of the bill. (Attachment 5) The Kansas Physical Therapy Association (KPTA) is a non-profit professional association representing physical therapists, physical therapist assistants who are licensed to practice in Kansas, and Kansas physical therapist students and physical therapist assistant students. KPTA is a chapter of the American Physical Therapy Association (APTA), the national professional organization representing more than 75,000 members.

KPTA requested introduction of and supports passage of the bill, which would permit the citizens of Kansas to access the services of a Licensed Physical Therapist for evaluation and treatment of muscular/skeletal issues without having to incur the costs of first seeking treatment from and receiving a referral from an M.D., a D.C., or a D.O.

Patients are amazingly proficient at being able to recognize the probable cause of many muscular/skeletal maladies, such as muscle pulls or strains. For the law to prohibit an individual from avoiding additional

health care costs and to require that they must incur these costs to seek services from an M.D,. a D.C., or a D.O., and to receive a referral from those practitioners of the healing arts before they can seek physical therapy is, to some extent, government making the decision with regards to an individual's health care.

This bill also protects patient care by requiring the Physical Therapist notify the patient's physician within 5 business days of the Physical Therapist's evaluation of the patient. In this way, if the patient's physician is aware that the patient has been prescribed medications that might be causing the muscular/skeletal pain or disorder, or is aware the patient has other diseases which might be causing such muscular/skeletal issues, that the patient can be so advised by his or her physician. In addition, in the event that the "patient does not demonstrate objective, measurable and/or functional improvement in a period of 45 calendar days from the initial evaluation, the physical therapist is required to obtain a referral from an appropriate licensed practitioner prior to continuing treatment."

This bill is designed to reduce healthcare costs, while protecting the safety, health, and welfare of the patient. Allowing the public to make medical decisions about their care and treatment without requiring a referral in advance parallels in many ways the concept of permitting patients to see a specialist without getting a referral from a family physician or an Internal Medicine specialist. Such practices were, at one time, believed to be necessary since some felt that individual patients were not capable of making such decisions regarding their own healthcare. Such practices were also found to increase healthcare costs, and administrative burdens on the healthcare system. In much the same way, this bill will enable Kansas citizens to seek treatment and to avoid incurring unnecessary healthcare costs.

Mark Dwyer, President of the Kansas Physical Therapist Association, presented testimony in support of the bill. (Attachment 6) Mr. Dwyer has been a physical therapist in Kansas since June 1987.

He stated as we all know, our healthcare system is changing before our eyes, and it has been doing so for quite some time. Even before the health reform law passed last year, patients, the true consumers of healthcare, were being asked to take on more responsibility in regards to prevention and health services procurement and financing. While private insurance continues to play a large role, the reality is that with high deductibles into the thousands of dollars, co-pays as high as $50 to $75 per visit, and 10% to 20% co-insurance rates, patients are paying a significantly higher proportion for their healthcare services than in the past.

If our system is going to change in that direction there should be one hallmark, and that is the patient should be able to exercise his/her choice as to what healthcare services to receive. Currently, per the Kansas physical therapy statute,[1] patients must first secure a referral from a physician or other practitioner before they can seek out the services of a physical therapist (PT). That is true whether insurance coverage is involved or not. For example, if a patient wanted to see a PT off the street and pay cash for those services, it is illegal to do so in most cases in Kansas.

In 2007 the PT statute changed to allow patients to seek out the care of a PT without a referral but only in very limited circumstances.[2] For most patients seeking PT care that change has not helped them. Also, because of the complexity of the statute and the concern over how it will be interpreted, many PT's have not implemented that limited access in their clinics. As a result, the financial burden of first securing a physician referral remains a reality for the vast majority of Kansans.

The consumer driven healthcare marketplace is here to stay and the trends are clear that that type of insurance model is growing rapidly. Therefore, if we are going to make patients responsible for more of their care then we must also entrust them with making the right choices in their care. PTs remain one of the only licensed healthcare providers in the State to still require some form of physician referral, even though the current educational degree for PT's is a Doctorate of Physical Therapy. Kansans should have the same access to PT services that they have for just about every other type of healthcare service, especially when the entry level educational requirement is at the highest possible point in the form of a Doctorate degree.

Currently 46 states and Washington, D.C. have some form of patient access to PT evaluation and treatment. Throughout the years of obtaining direct access at the state level, PT's have been questioned

about their ability to identify a patient's signs and symptoms correctly, especially when they may represent cancer or other life-threatening conditions if the patient was not first seen by a physician. This argument incorrectly concludes that direct access to PT's constitutes a threat to public safety. However, a closer look at the facts, data, and evidence proves otherwise.

With 30-50+ years experience with direct access in the states that permit it, there is absolutely no evidence that physical therapists misinterpret a patient's signs and symptoms as non-pathological leading to serious injury or death. Physical therapist malpractice rates do not differ between states with patient direct access and those with a physician referral requirement. Furthermore, when the number of complaints against physical therapists filed with state licensure boards were examined prior to and after elimination of the physician referral requirement, no increase of complaints centered on patient harm was found.

In the research study entitled "Documentation of red flags by physical therapists for patients with low back pain" Leerar[3] et al studied the frequency of medical screening procedures in 6 private practice clinics. In this retrospective chart review of 160 patients admitted with low back pain, they found that an average 8 out of the 11 recommended "red flag" screening questions were documented in the chart. The authors noted that this was comparable to or exceeded that of physicians in five other studies.

In another study, Boissonnault et al[4] reported on 81 patients seen under direct access in a non-profit, hospital-based outpatient department, and found that retrospective physician review of physical therapist management decisions determined that physical therapist decisions were appropriate 100% of the time. These decisions included making referrals for additional imaging studies, medical consultation, and medication for pain management.

As referenced above, PT malpractice rates do not differ between states that do and do not have direct access to PT services according to documentation received from HPSO, the largest malpractice liability coverage provider for physical therapists in the United States (see attached letter) HPSO states that they have not found any incidence of increased liability risk in states with direct access as compared to those without it (see the attached letter). Insurance companies are in the business of assessing risk, and this data from HPSO demonstrates that safety is not an issue in states that allow direct access, such as in Nebraska where their citizens have enjoyed unlimited PT direct access since 1956.

Thus, I ask that you please support this bill and allow the citizens of Kansas to access a cost-effective physical therapist when they feel the need to do so. Limiting access to physical therapists while allowing it for many other professions does a disservice to Kansans wanting to make that choice themselves as they exercise the responsibility that our changing consumer driven healthcare system is requiring them to take on.

[1]Chapter 65, Article 29 Physical Therapy (Practice Act). www.ksbha.org/statutes/ptact.org

[2] Chapter 65, Article 29 Physical Therapy (Practice Act), section 65.2921. www.ksbha.org/statutes/ptact.html#2921

[3] Leerar PJ, Boissonnautt W, Domholdt E, Roddey T. Documentation of red flags by physical therapists for patients with low back pain. *J Manual Manipulative Ther.* 2007;15(1):42-49.

[4] Boissonault WG, Badke MB, Powers JM. Pursuit and implementation of hospital-based outpatient direct access to physical therapy services: an administrative case report. *Phys Ther.* 2010;90:100-109.

Pam Palmer, Legislative Chair for the Kansas Physical Therapist Association, presented testimony in support of the bill. (Attachment 7) This bill would remove the requirement that physical therapists must have a referral from a physician prior to treating a patient.

I own a physical therapy clinic in Wichita, KS. Every day I see how much the cost of health care has increased. Individuals now pay large sums of money for their health care. My patients can have $2,000 - $4,000 deductibles which they pay prior to insurance assistance. Some choose to pay for services out of pocket because they have no insurance. They are consumers in every sense of the word. People now

shop for their healthcare provider, looking for those who can provide the best outcome for the dollars they spend. Unfortunately, they don't get to choose to see a physical therapist. They can independently seek services from a chiropractor, optometrist, personal trainer or massage therapist for their medical care, but a physician must decide for the patient as to whether they receive physical therapy services. Even if the patient wishes to pay cash for treatment rendered, a PT cannot treat that patient unless a referral is obtained. This is a patient choice issue. They should decide how to spend their health care dollars.

I own a small business in Kansas. My ability to keep people employed and grow my business is dependent on the ability of the public to seek my PT services without physician referral. Many physicians now work for large corporations or hospitals, and only refer patients to healthcare professionals within their group. This is financially advantageous for them. The patient usually doesn't realize they have a choice for physical therapy. This bill is vital for small businesses in Kansas.

Opponents of this bill will say the risk of public harm is increased if direct access to PT services is available. However, facts just don't reveal that to be true. People in Nebraska have had unrestricted access to physical therapy for 50+ years. If this practice was harmful to the public, if cancer diagnoses were being missed by PTs, wouldn't you think that law would have changed by now? If the public was being harmed, malpractice liability claims would have skyrocketed in Nebraska. Malpractice liability insurance premiums would be significantly higher in Nebraska. Physical therapists would be losing their licenses to practice. It's simply not true. Physical therapists are held to the same high standards for medical care, just as any healthcare provider of the healing arts, and can be sued and lose their license to practice if they don't maintain that standard.

Here is an example of what has happened in my office. I treated a patient who the physician saw in office initially, then authorized 6 PT visits. After the 6 visits, the patient was making steady progress and the doctor was informed of that progress. We requested an additional 3 visits to finish up the plan of care. The physician required the patient to return to see her if she wanted more PT, even though the patient did not want or need to see the doctor again for this problem. The patient had to spend unnecessary healthcare dollars as did the insurance company.

Many expensive procedures, such as surgery, injections and MRIs are performed prior to more cost effective PT services which may eliminate the need for those procedures. Many times, the patient is not given the option of physical therapy before invasive procedures are performed. The patient can incur significant financial loss when more conservative measures can resolve the problem. Also note that most insurance companies pay for services without a physician referral, so the patient would not be financially compromised without a physician referral.

This bill can help Kansans better manage their healthcare utilization and costs. I encourage you to support this change.

Glennis Svanda presented testimony as a health care consumer and a health care provider for over 30 years, in support of the bill. (Attachment 8) She began experiencing low back pain on the left side of her back four years ago. In 2009, she began to seek help for it as the pain had escalated and she was also experiencing numbness in her right upper leg. She went to her health care providers, who did not even suggest that it might be muscular-skeletal and that she could benefit from a Physical Therapist evaluation, but were ready to perform surgery “if she felt like her pain was bad enough”.

Two weeks before the scheduled surgery, she attended a meeting with other health care professionals, and was voicing her concern about this being the correct treatment when it was suggested that, perhaps, this had nothing to with the uterine fibroids, but instead was related to her spinal cord. She called her doctor and postponed her surgery and asked for a prescription to be seen by a Physical Therapist.

The pain and numbness was spinal cord, vertebra and disc related and she began to obtain pain relief within a couple of weeks of therapy treatment and an exercise program at home. Within two months, her back pain and numbness were well controlled. Instead of the thousands of dollars she would have spent out of pocket for her deductibles and copays, as well as the six weeks of lost income from work, she spent a much smaller amount on physical therapy and actually had relief, which would not have happened with a hysterectomy.

Two months ago, she lifted something she should not have, and as the week progressed began experiencing left shoulder/arm pain and a return of the numbness in the right leg. She should have been

able to return to her Physical Therapist who had treated the same problem successfully before but could not without first seeing her physician, whom immediately wanted to refer her to a Pain Specialist and get cortisone injections. She told him she would pass on that as she believed that physical therapy would help her recover, not just be a quick, temporary fix. Again, she had to get a prescription from her physician, when she knew that physical therapy had helped her so much in the past and that she was dealing with the same problem. One month later, she was virtually pain-free. She has not had to take any medications for her back in over a week. Above that, she has made adjustments in her body mechanics and will continue daily with her back exercises, which should keep her pain free for a long time, as compared to someone dependent on pain medications and cortisone injections for the rest of her life. The money she spent on physical therapy is a fraction of what she would have spent on the medical treatment plan prescribed.

In closing, she is an educated consumer who can make health care decisions and challenge her physicians when she doesn't agree with them. The general public doesn't know they can challenge their health care providers and opt for more cost effective and alternative treatments. As a consumer, she believes she should be able to choose her health care providers, be it a chiropractor, dentist, massage therapist or a physical therapist without a physician referral.

Lisa Stehno-Bittel of Bonner Springs, Kansas presented testimony in support of the bill. (Attachment 9). She is a native Kansan from Hays, and the Chair of the Department of Physical Therapy and Rehabilitation Science at the University of Kansas, one of the top ranked physical therapy programs in the country.

I am here to register my strong support for the proposed changes in the practice act and the improvements that they will provide for patient access while ensuring patient safety.

The students entering our PT programs are extremely qualified. The prerequisite courses rival the requirements for most medical and dental schools, and are more rigorous than the prerequisites required to enter Chiropractic School. For example, the only course that our students are not required to have as a prerequisite that medical or dental students must have is organic chemistry. Otherwise, our PT students must pass the same biology, physics and chemistry courses. In fact our prerequisites in math, computer science, and anatomy are more rigorous than those of the University of Missouri School of Dentistry, which is our closest dental school, since we do not have a dental school in our state. Likewise, we require the same level of biology and chemistry, but significantly more Anatomy and Physics than the local Cleveland Chiropractic Clinic.

The average entry GPA for the PT students accepted into our program for the past three years is a 3.72 on a 4.0 scale. Allow me to provide some comparisons. The average entry GPA for most dental schools last year was 3.46. In fact, the University of Colorado, one of the top dental schools in the country, has an average admittance GPA below ours at 3.70.

The educations and clinical experience to become a physical therapist include an average of 3,000 hours of instruction. This education includes anatomy, histology, physiology, biomechanics, kinesiology, neuroscience, pharmacology, pathophysiology, clinical sciences, clinical interventions, research, ethics, medical imaging, screening, and health care administration as applied to physical therapy. In Kansas, the only PT degree offered is at the doctorate level. Across the country over 90% of the PT education programs offer a doctor of physical therapy (DPT) degree.

Some states have more than 30 years of experience with direct access for physical therapy. In those states there is absolutely no evidence that physical therapists are unable to discern when they should refer a patient to the physician for a problem that is beyond the care of a PT. The physical therapist malpractice rates do not differ between the states with patient direct access and those with a physician referral requirement. Furthermore, when the number of complaints against physical therapists filed with state licensure boards were examined prior to and after elimination of the physician referral requirement, there was no increase of complaints.

In those states that have the ability to treat patients without physician referral, the therapists use their screening skills to determine whether a patient's problem is appropriate for PT care or should be referred to a physician. I teach a course to already licensed PTs where we review the tests and measurements used to screen patients for problems that are not appropriate for PT treatment. I have several assignments asking students to write case studies about patients that they treated where they, the PT, detected a medical problem that had been missed by other health care providers. I instruct them to go to the literature and

write about the case studies published by others, if they have not experienced such an incident. They all write about situations in which they identified non-musculoskeletal issues that needed to be checked out by a physician. Only those therapists working in pediatric settings occasionally have to write about published case studies. The reality is that these licensed Kansas therapists are already referring patients to other practitioners when their screening results indicate it is appropriate. In the current health care environment, it is the PT who spends significantly more time with the patient and their family than the physician and thus are in a position to catch problems that can arise. The bottom line is that every day PTs are already demonstrating that they can differentiate between patients that are appropriate for PT care and those that are not, and they act in a timely manner to ensure that the patient gets the correct care.

The final thing that I ask that you consider is access to health care for all Kansans. The vast majority of our PT students grew up in Kansas. Most plan to stay in the state after graduation. Imagine their disappointment, when they learn that they cannot practice with the same freedom as PTs in other states including neighboring Nebraska. We have watched many of our most promising Kansas graduates leave the state to practice in states with direct access for PTs. While the governor's office is proposing programs to encourage people to move and work in targeted rural counties in Kansas, our out-of-date practice restrictions push our own graduates out of the state for meaningful employment.

As we are all aware, fewer medical students are interested in family practice, and predictions of even fewer physicians in rural area abound. We should embrace every opportunity to get our constituents into the health care system for proper care. PTs offer a safe and efficient way to do that. Currently, in the state of Kansas, there are five practicing adult endocrinologists, and they are located in Kansas City, Topeka and Wichita. The rest of the state is without an endocrinologist. These specialists treat a number of disorders including diabetes. With eight percent of the Kansas population diagnosed with diabetes and another estimated eight percent undiagnosed with the disease, we need to offer all possible help to this population. Physical Therapists are familiar with the signs and symptoms of diabetes, and when to refer patients to a physician. Why should we put up barriers to the public's interaction with an exercise specialist, a PT, when all literature supports exercise to prevent or manage the disease, and reduce the financial and emotional burden of diabetes?

In summary, we have to ask ourselves, are we doing what is best for the public, or what is best for a specific profession. Significant research indicates that the requested changes will not negatively impact patient care. Further, it will allow more timely and less expensive care from well-trained practitioners.

No written testimony was submitted by proponents.

Jaime McAttee, Kansas Orthopaedic Society, presented testimony in opposition to the bill. (Attachment 10) The association is opposed to physical therapists initiating treatment on individuals without a physician referral beyond the limited parameters currently in place.

The Kansas Orthopaedic Society was involved along with KMS and the Kansas Physical Therapy Association in discussions that brought Kansas the current law regarding the limited direct access enjoyed by physical therapists. The current law was the product of careful thought and deliberation between the parties and has had only limited time to be implemented.

Our surgeons work closely with physical therapists on a regular basis and the public benefits from that professional collaboration as it currently exists with a physician providing diagnosis and continuity in patient care throughout the treatment. To depart so radically from current law and practice, suddenly allowing a physical therapist to diagnose and initiate treatment without the involvement and supervision of a physician, is major departure from the well established and safe model of health care delivery Kansans currently benefit from.

The role of the physician, especially his/her familiarity with all of the patient's medical conditions, is critical to the continuity of care and ensuring that the total patient is carefully evaluated in developing any course of treatment, including physical therapy. Patients may have a broad range of medical conditions that present with similar symptoms. These aspects of conditions must be considered to arrive at a medical diagnosis and before commencing any treatment, including physical therapy. These conditions must be weighed and evaluated by a physician, as only physicians have the training to consider the patient's broad range of medical diagnoses and care needs, which oftentimes include conditions or treatments not within

the scope of a physical therapist's education and training.

We do not support this bill and do not believe there is any compelling reason to give physical therapists such unbridled access to the public needing medical care, without the involvement of a physician with the appropriate training and education to consider all medical needs of the patient.

Like the Kansas Medical Society, we would be pleased to meet with representatives of the physical therapy community to discuss the matter further. Unfortunately, we have not been afforded that opportunity prior to the introduction of this measure.

Dan Morin, Kansas Medical Society, presenting testimony in opposition to the bill. (Attachment 11) The bill allows Physical Therapists to initiate treatment on individuals without a physician referral. Under current law, Physical Therapists may only initiate treatment under certain limited conditions, by a physician or certain other health care providers.

Current law was most recently amended during the 2007 legislative session when the Kansas Medical Society came to an agreement after several meetings with representatives of the Kansas Physical Therapy Association on this issue. We sincerely appreciated the willingness of the KPTA to meet with us then and discuss our concerns and questions. Physical therapists and physicians work very closely together all across this state to provide quality health care to Kansans. We believe the structure of our current framework, which allows for limited direct access under certain conditions and promotes a collaborative framework between physical therapy and the practice of medicine is ideal for high quality patient care for the benefit of patients.

Unlike the recent agreement between KMS and KPTA which was deliberately discussed and developed, we only became aware of the bill currently before you less than two weeks ago. This legislation is a significant departure from the current statutory framework and would authorize Physical Therapists to diagnose and initiate treatment without any involvement, supervision, or coordination by a physician. The bill would remove the current requirement for a physician's diagnosis to provide a course of physical therapy. Physical therapy is very important, but it should be done in collaboration with a physician. We wish to stress the important role that a physician and surgeon plays in ruling out other medical conditions, outside a Physical Therapist's education and training, that could be the source of the pain, before referring the patient for physical therapy treatments. Many patients often have multiple conditions and physicians can consider their broad medical care needs, which may include dangerous acute conditions.

Proponents will undoubtedly claim that access to care will be improved and the 2007 change in law is not working well. If there truly is a problem with patients gaining access to physical therapy services, KMS remains willing to work with the KPTA to find a solution that maintains safe and quality patient care. Proponents will also claim a significant majority of states currently allow direct access. However, according to the American Physical Therapy Association, only 17 have unrestricted direct access laws that truly permit physical therapists to provide PT services without a physician's involvement.

The KMS cannot support the bill. However, we do offer to again start a dialogue with KPTA similar to our productive discussions in 2007.

Ron Gaches, on behalf of the Kansas Occupational Therapy Association presented testimony in opposition to the bill. (Attachment 12) This bill is a proposal that would dramatically alter the practice of physical therapy in Kansas and is generally termed a “direct access” bill. While the Kansas Occupational Therapy Association is not against some changes in the patient access provided physical therapists, we believe this bill is overly broad and could adversely impact patient care.

Specifically, the bill eliminates virtually all of the preliminary requirements for access to the services of a physical therapist. The physical therapist alone will be making the assessment of the patient’s condition and determining whether or not the patient needs the services of a physical therapist. There has been no showing that physical therapists have the education or clinical training equivalent or greater than those medical practitioners who currently control access to physical therapist services. We believe the assessments and diagnosis received by patients may be less comprehensive and rigorous than under the

requirements of current law. Also, we are concerned that allowing a physical therapist to work without direction from a referring physician may create situations where a therapist will be tempted to work at the limits and beyond of their current education and training in an effort to aid the patient.

Secondly, the bill provides that the physical therapist will be solely responsible for determining whether or not the patient is demonstrating "objective, measurable or functional improvement, or any continuation thereof, in a period of 45 days …" If the physical therapist determines that such progress is being made they can continue to treat the patient. Only if they determine there is not a demonstration of improvement would a patient be referred to a physician for evaluation and possible referral. This clearly puts the physical therapist in control of the patient's course of treatment without benefit of evaluation and diagnosis by a medical professional who is more broadly trained. Clearly, the physical therapist is not as broadly trained as a physician to make the initial assessment; otherwise, why would the bill require a subsequent assessment after 45 days without improvement be made by a physician.

Further, authorizing this direct access model may lead to increased health care costs. A proper and thorough medical assessment and diagnosis may not occur until after a 45 day period of unsuccessful therapy. Following a physician assessment and diagnosis the patient may need to receive a completely different course of treatment following the initial 45 day expense. In addition, the prior 45 day period of physical therapy treatment would draw down the allowable physical therapy benefits for which the patient is eligible in an annual benefit period, particularly in a managed care model. If the initial 45 day treatment period is not successful because of improper assessment and diagnosis, the expense would be unnecessary and the patient's allowable physical therapist treatment time would be drawn down.

Under our current medical care model, physical therapists are highly valuable members of a collaborative team. We believe this bill proposes changes that may work to undermine the current high quality of care and increase costs for some patients. For these reasons KOTA recommends rejection of this proposal.

Bob Williams, M.S., Executive Director, Kansas Association of Osteopathic Medicine, presented written testimony only in opposition to the bill. (Attachment 13) He stated the bill eliminates the provision requiring a referral from a physician for a physical therapist to treat patients. Additionally, it expands the length of time a physical therapist may treat patients without notifying a physician from 30 days to 45days.

The Kansas Association of Osteopathic Medicine is concerned that, by elimination of a referral for treatment, health conditions outside of the physical therapist's scope of practice and/or range of knowledge may go undetected which may exacerbate a patient's medical condition. The expansion of obtaining a referral from 30 days to 45 days could further compromise a patient's medical condition.

By removing the required referral from a physician, physicians are removed from the patient care loop, continuity of care is disrupted, and an important safe guard is eliminated. KAOM encourages you to vote against passage of this bill.

John Kiefhaber, Executive Director, Kansas Chiropractic Association, presented written testimony in opposition to the bill. (Attachment 14) KCA cannot support the change in statute proposed, because doctors of chiropractic strongly believe that the healing arts act serves to assure Kansas patients of a proper examination and diagnosis of their health condition before a course of treatment would be started. This statutory control serves to allow practitioners of the healing arts the opportunity to apply their education, training and experience with patients before an ill-designed or inadequate treatment approach could harm a patient. Sometimes it is the lack of adequate diagnosis and treatment that could cause an injury or ailment to get worse if not properly diagnosed. KCA has not seen any information that would lead us to believe that Kansans are not.

Thank you for the opportunity to comment. We would urge the Committee to NOT REPORT the bill out for passage.

The Chair gave members the opportunity to ask questions. One question concerned whether there were other states that allowed direct access and it was indicated that there are a number of states so it would not

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be unique to Kansas. Another question concerned why the change from 30 days to 45 days for obtaining a referral, for which there was no specific reason given. A question was raised concerning whether or not Physical Therapists can order an MRI or x-ray and it was indicated to order these tests is not in the Physical Therapists' scope of practice. There were additional questions concerning the training received by Physical Therapists. After all questions were addressed, the Chair closed the hearing on the bill.

The next meeting is scheduled for February 15, 2011 at which a hearing will be held on **HB 2280**.

The meeting was adjourned at 2:55 p.m.