Testimony for Senate Bill 351
Establishing the Pharmacy Patients Fair Practices Act
Senate Financial Institutions and Insurance Committee
By Aaron Dunkel, Executive Director
Kansas Pharmacists Association, Topeka Kansas
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Chairman Longbine and Members of the Committee:

I am Aaron Dunkel, Executive Director for the Kansas Pharmacists Association (KPhA). The Kansas Pharmacists Association is the statewide professional association that represents Kansas pharmacists, pharmacy technicians and student pharmacists from all practice settings. Thank you for allowing me to testify on behalf of KPhA in support of Senate Bill 351—Establishing the Pharmacy Patients Fair Practices Act.

This bill provides protections for patients related to the cost of their medications, medication alternatives and their choice of pharmacy provider. SB 351 disallows several practices that we believe impede cost transparency for the patient and restrict the patient's choice of provider. The bill focuses on eliminating practices, that historically, have been found in contracts provided to pharmacies by pharmacy benefit managers (PBMs).

There are seven common practices we are asking to be restricted in this bill. None of the items in the bill are intended to limit competition between pharmacies, just to eliminate practices that limit the patient's access to information about their medication costs and deter a patient's choice of provider. The first practice we are asking to restrict is that of a patient of a commercial insurance plan being required to pay a copay for their medications that is greater than the total reimbursement to the pharmacy for the transaction. This includes both the cost of the medication and the fee to dispense. In these situations, it is important to understand that the copay is set by the pharmacy benefit manager for the insurance plan. It is also important to understand that, in addition to the copay, the PBM sets the amount the pharmacy is paid for the medication and the dispensing fee, so it is not as if the PBM is setting a copay without full knowledge of what the pharmacy is going to be reimbursed. In these situations, the pharmacy must remit back to the PBM the difference between the copay and the total pharmacy reimbursement. In order to adequately understand the final reimbursement to the pharmacy, this bill also limits the collection of retrospective fees on specific prescriptions. This allows for full transparency at the point of sale of the relationship of copay to pharmacy reimbursement.

To illustrate this point, in a recent transaction a pharmacy in Kansas dispensed a medication for which they were reimbursed a total of $1.43. For that same transaction, the patient was charged $31.00. The difference of $29.57, had to be remitted to the PBM for the transaction. We included this section because, while not all PBMs are currently operating in such a way, we hear of examples of this practice in Kansas on an almost daily basis.

SB 351 would also ensure that pharmacists have the ability to discuss lower cost medication alternatives with their patients. We believe that if it is less expensive for the patient to pay out of pocket for a medication than to utilize their insurance benefit to purchase a medication, this conversation should be allowed to occur. In addition, we are asking for protection from contracts that disallow pharmacists/patient conversations regarding alternatives available for the patient that might be less costly and clinically equivalent. An example of this would be talking about and then substituting an equivalent generic for a brand name medication. In many contracts PBMs have limited pharmacies in their ability to discuss costs or treatment alternatives with patients. It is our sincere belief that the ability to discuss medication options and to provide medication reviews with patients constitutes one of the largest benefits of the patient/pharmacist relationship. These kinds of reviews contribute to positive patient health outcomes, and in the long run reduce health care costs.

Another practice the bill would restrict would be mandatory mail order. This is the situation in which the PBM requires a patient to use their mail order pharmacy for a prescription. While there are times that we believe this to be a legitimate practice, such as when the medication needs to be acquired from a specialty pharmacy, we also believe that the general practice greatly restricts patient choice. You will hear a personal story regarding this practice in another testimony this morning. Once again, we are not averse to mail order pharmacies being the patient choice for their services based on convenience or price considerations, but to require it reduces the ability of the patient to make their own decisions and reduces the pharmacy's ability to compete in a fair marketplace.

Conversely, SB 351 removes the ability of the PBM to contractually restrict home delivery by a pharmacy. Home delivery by local pharmacies allows those that are temporarily or permanently home bound to use their local pharmacy for their prescriptions. In many cases the local delivery person might be one of two or three people from the community that visit with some of these patients on a regular basis.

The final practice the bill limits would be limiting distribution of readily available medications using a "specialty drug" designation. In many circumstances drugs that are obtainable by almost any pharmacy in the country are either wholly, or conditionally, designated as "specialty drugs" by PBMs. This designation, then restricts the type of facility that can distribute that drug under the contract to a "specialty drug" facility, which often are out of state facilties. While there are legitimate uses of this designation, we believe that a drug that is available for almost any pharmacy to purchase and distribute should never, or at least in very rare and special situations, be restricted in this way.

I would like to reiterate in closing that all of the provisions of SB 351 are intended to ensure that patients are allowed access to information about their medication costs and medication alternatives, while also allowing them to choose who they would like to receive their pharmacy services from in a competitive, open market.

Thank you for your time and consideration today, I would be happy to stand for questions at the appropriate time.

Aaron Dunkel
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