

SUMMARY OF PHARMACY ISSUES
2011 Kentucky General Assembly
(including Special Session activity)
March 28, 2011

Prepared for the Kentucky Pharmacists Association
by the Kentucky Retail Federation

From the time the opening gavel fell on January 3 until the 2011 General Assembly adjourned earlier than expected on March 9, it was an unusual session. Breaking with tradition during the odd-numbered year “short” session, the State Senate acted on legislation during the opening week that has historically been limited to organizational activities such as leadership elections and committee assignments. When lawmakers returned to Frankfort on February 1 for part two of the 30-day session, 12 bills had already passed the Senate and were awaiting House action.

KPhA’s “watch list” for the 2011 Session included more than 30 bills and resolutions. KPhA was successful in expanding immunization authority for pharmacists ([SB 40](#)) and passing legislation to update Kentucky’s controlled substance statutes to accommodate electronic prescribing ([HB 311](#)).

One major issue that remained unresolved at the end of the 2011 Session was legislative action needed to address a projected \$166.5 million shortfall in the state’s Medicaid program in the current fiscal year. The House approved a plan put forward by Governor Steve Beshear to transfer funds appropriated for next year to cover this year’s deficit and then reduce FY 2011-2012 program expenditures through the expansion of managed care initiatives and other efficiency measures. The Senate rejected that approach as too dependent on potential savings and instead passed an amended version of [HB 305](#) that made across-the-board cuts throughout state government, including education funding, to help resolve the Medicaid budget problem. The two chambers were unable to reach agreement on a solution before the 30th legislative day expired.

On the same day the 2011 Session ended, Governor Beshear issued a proclamation calling lawmakers back to Frankfort for an Extraordinary Session starting Monday, March 14. If lawmakers failed to pass a Medicaid budget fix, the Governor said his only alternative is to make deep reductions in provider rates in the Medicaid program starting April 1. On the ninth working day of the Special Session, legislation to fix the Medicaid problem won final approval and the April 1 provider cuts were avoided.

The following summary provides a narrative regarding the activity on some of the major issues affecting the pharmacy community that were considered during this year’s legislative session. The electronic version of the 2011 Summary of Pharmacy Issues includes links to the legislature’s official website so you can easily access the complete summaries prepared by legislative staff and all action on the measures, as well as review the full text of individual bills and resolutions. Bills enacted during the 2011 Session will take effect on Wednesday, June 8 unless a specific effective date was included in the legislation or the legislation contained an emergency clause which makes it effective as soon as it is signed by the Governor.

Medicaid Funding: The legislature adjourned the 2011 Regular Session of the Kentucky General Assembly without reaching an agreement on [HB 305](#), the bill to address the Medicaid funding shortfall in the current fiscal year. The House version of the bill transferred about \$166.5 million in funds from fiscal year 2012 to the current year and envisioned the resulting 2012 shortfall to be made up by savings from the implementation of managed care initiatives. This approach was proposed by Governor Steve Beshear. The version that passed the Senate, however, used a much different approach to solve the funding gap. The Senate proposed across-the-board cuts in state appropriations in both the current and next fiscal year. For FY 2011 the proposed cuts were slightly more than one-half of one percent. In 2012, the Senate proposed a 2.26 percent cut in state expenditures outside of primary and secondary education. Education would receive only a 1.33 percent cut. While both sides attempted to work out a compromise, negotiations broke down and lawmakers went home without solving the funding shortfall. Governor Steve Beshear called legislators back to Frankfort for a special session to address the issue.

Legislators convened the Special Session on March 14 and ultimately passed legislation to address the Medicaid funding shortfall. The legislative action forestalled significant Medicaid reimbursement cuts that were scheduled to go into effect April 1 if the Medicaid funding gap was not addressed.

Pseudoephedrine (PSE) Sales: The issue of making pseudoephedrine a prescription drug was a hot topic this session. Senator Tom Jensen (R-London) filed [SB 45](#) on January 4. This measure not only made PSE a prescription drug but made it a Schedule IV drug subject to the state's electronic drug tracking system (KASPER). Meanwhile in the House, Representative Linda Belcher (D-Shepherdsville) introduced [HB 15](#) also making pseudoephedrine a prescription drug but not a scheduled drug. Belcher later withdrew [HB 15](#) and introduced [HB 281](#), a measure identical to [SB 45](#). After a hearing, the Senate Judiciary Committee reported out [SB 45](#) but the measure never received a vote by the full Senate as Senators were deeply divided on the issue. The House Judiciary Committee did not act on [HB 281](#).

Two bills advocating changes to the state's current pseudoephedrine tracking system, MethCheck, to prevent convicted drug offenders from purchasing these products, were also introduced this session. [SB 106](#) and [HB 295](#) also lowered the monthly purchase limit. Neither bill received a hearing this session.

Finally, Representative David Floyd (R-Bardstown) introduced [HB 376](#) that would have made PSE a prescription drug but would have allowed pharmacists to dispense the product without a prescription under certain circumstances. The bill would have also required PSE transactions to be reported to KASPER and would have left the current MethCheck system in place. [HB 376](#) did not receive a hearing in the House Judiciary Committee.

Medicaid Fraud: [SB 11](#) establishing the "Kentucky False Claims Act" unanimously cleared the Senate on the first week of January. The measure would have allowed third parties (whistleblowers) to bring actions against health care providers for

Medicaid fraud. The act also allowed for treble damages and a civil penalty if Medicaid fraud was found. The whistleblower would be entitled to receive a portion of any monies recovered and reimbursement for attorney fees. House Speaker Greg Stumbo (D-Prestonsburg) filed a similar bill in the House. [HB 4](#) contained the same whistleblower provisions as [SB 11](#) but applied to any entity that does business with the state, not only Medicaid providers. The House passed [HB 4](#) by a vote of 98-0 on February 14. Neither bill received a vote by the other chamber as the issue apparently fell victim to the political friction between the House and Senate. A broad-based coalition of provider and business groups, including KPhA, were very active in opposing the issue because of the potential exposure of members to frivolous lawsuits.

Expansion of Pharmacist Immunizations Pharmacists will have broader immunization authority as a result of legislation passed this session. Senate Health & Welfare Chair Julie Denton (R-Louisville) filed [SB 40](#) building on an initiative passed last year that allows pharmacists to administer immunizations to individuals 14 to 17 years of age via protocols. [SB 40](#) lowers the permissible age to 9 but limits immunizations to those individuals to the flu vaccine. [SB 40](#) was signed by the Governor on March 16.

Electronic Prescribing: The Kentucky Board of Pharmacy and the Office of Inspector General (OIG) asked Representative Bob Damron (D-Nicholasville) to file legislation to update KRS Chapter 218A to accommodate electronic prescribing. Kentucky's current statutes in this area were outdated and needed updating to allow for technological advances in e-prescribing. [HB 311](#) allows the electronic prescribing of Schedule II drugs. Technical amendments were added in the House and the Senate to clarify the use of facsimile prescriptions and the amended bill passed both chambers and has been signed by Governor Beshear.

Prescription Drug Disposal: Representative Joni Jenkins (D-Shively) proposed the creation of a state-run drug disposal program for unused prescription drugs. [HB 152](#) directed the Energy and Environment Cabinet, in conjunction with local law enforcement agencies, to develop "drop off" sites for unused prescription drugs. [HB 152](#) cleared the House Health & Welfare Committee but was recommitted to the House Appropriations & Revenue Committee where it died. Legislators were concerned about the bill's cost which was estimated to be more than \$2 million annually.

Durable Medical Equipment: Representative Melvin Henley (D-Murray) introduced a bill to require an out-of-state DME provider that does business in Kentucky to have a physical location within the state under specified circumstances. [HB 42](#) would have required an in-state location if the DME provider's home state had a similar requirement. The bill passed the House but died in the Senate.

Pain Management Clinics: There were a number of bills filed this session establishing licensure requirements for pain clinics. Although none passed, we anticipate action on the issue over the interim. The Office of Drug Control Policy is interested in forming a task force to examine the issue prior to the 2012 General Assembly.

Dextromethorphan Sales: Representative Fitz Steele (D-Hazard) introduced [HB 85](#) during the first week of the Session restricting the sale and display of products containing dextromethorphan. The bill prohibited the sale of many cough preparations products containing dextromethorphan as the only active ingredient to persons under the age of 18. In addition, the measure required these products to be locked up between the hours of 10 p.m. and 7 a.m. if the establishment is open during these hours. The product could only be accessible to supervisory personnel during these hours. The measure failed to receive a hearing in the House Judiciary Committee.

Advanced Practice Registered Nurses (APRNs): Representative Keith Hall (D-Phelps) introduced [HB 282](#), a bill to remove the requirement that APRNs have a collaborative agreement with a physician in order to prescribe non-controlled substances. The bill easily cleared the House but died in the Senate Judiciary Committee. An attempt to attach the bill as an amendment to the immunization bill ([SB 40](#)) failed in the House in the final days of the session.

Physician Assistants (PAs): Legislation to allow PAs to prescribe and dispense controlled substances cleared the House. [HB 241](#) was not acted upon in the Senate.

Fitting of Shoes for Diabetics: Legislation proposing to include the fitting of shoes for diabetics within the scope of practice of a pharmacist died this session. [HB 453](#) attempted to address a possible issue created by the passage of a bill last session creating licensure standards for persons involved in the fitting of prosthetic, orthotic and pedorthic devices. The issue appears to involve whether certain actions can be performed by employees of pharmacies. We anticipate we will be working on the issue over the interim.

Diabetes Educators: The General Assembly passed legislation establishing licensing standards for diabetes educators. [SB 71](#), however, exempts pharmacists and other licensed health care professionals, from the new requirements although a pharmacist is included as a member of the new licensing board. A similar measure introduced in the House ([HB 217](#)) passed the House but died in the Senate. [SB 71](#) was signed by the Governor.