Department of Legislative Services

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2013 Session

FISCAL AND POLICY NOTE
Revised

House Bill 986 (Delegate Hammen)
Health and Government Operations Education, Health, and Environmental Affairs

State Board of Pharmacy - Sterile Compounding - Permits

This bill establishes three mechanisms to regulate facilities or practitioners that perform "sterile compounding" or distribute a "sterile drug product" into or within Maryland. First, the bill requires a "sterile compounding facility" (including a pharmacy, a health care practitioner's office, or any other setting in which sterile compounding is performed) to hold a sterile compounding permit from the State Board of Pharmacy. A sterile compounding facility that performs sterile compounding outside the State must hold a sterile compounding permit from the board before dispensing sterile compounded preparations in the State. Second, the bill requires a person that prepares and distributes sterile drug products into or within the State to hold both a manufacturer permit or other permit from the U.S. Food and Drug Administration (FDA) and a wholesale distributor permit from the board. Finally, the board is authorized to issue a waiver of the bill's requirements to a sterile compounding facility or a person that distributes a sterile drug product under specified circumstances.

The bill takes effect July 1, 2013. Uncodified language authorizes the board to phase in the bill's requirements, but full implementation must be completed by April 1, 2014.

Fiscal Summary

State Effect: Special fund expenditures for the State Board of Pharmacy increase by $363,300 in FY 2014 to issue sterile compounding permits and any additional wholesale distributor permits as required under the bill. Special fund revenues increase by $210,000 in FY 2014 from sterile compounding permit fees. Special fund revenues for the board also increase from the issuance of additional wholesale distributor permits and may increase from the imposition of civil fines for operating a sterile compounding facility without a permit. Potential minimal increase in general fund revenues and expenditures due to the bill's criminal penalty provisions. Future years reflect inflation and biennial permit renewal.

(in dollars)	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018
SF Revenue	$210,000	$0	$210,000	$0	$210,000
SF Expenditure	$363,300	$333,700	$349,000	$365,000	$381,800
Net Effect	($153,300)	($333,700)	($139,000)	($365,000)	($171,800)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: Potential minimal increase in expenditures due to the bill's criminal penalty provisions.

Small Business Effect: Potential meaningful. Facilities where sterile compounding is performed and persons that distribute a sterile drug product are required to obtain specified permits and operate under the requirements of the bill and associated regulations.

Analysis

Bill Summary: "Sterile compounding" means compounding of biologics, diagnostics, drugs, nutrients, and radiopharmaceuticals that, under USP 797, must be prepared using aseptic techniques. "USP 797" means the standards set forth in the United States Pharmacopeia, General Chapter 797, "Pharmaceutical Compounding – Sterile Preparations." "Sterile drug product" means a drug product that must be prepared using aseptic techniques and is not required to be prepared in response to a patient-specific prescription.

Sterile Compounding Permits: To qualify for a sterile compounding permit, an applicant must satisfy the board that the applicant will perform sterile compounding in accordance with the requirements of the bill. The board must establish by regulation permit requirements for applicants based on risk.

To apply for a permit, an applicant must (1) pay an application fee and (2) submit an application to the board. However, the board may not issue a permit unless the board or its designee conducts an inspection of the facility applying for a permit and finds that the facility meets the board's requirements.

A permit is valid for two years and may be renewed if the applicant is otherwise entitled to the permit, pays the renewal fee, and submits a renewal application. A separate compounding permit is required for each site at which sterile compounding is performed. A sterile compounding permit is not transferable.

The board must adopt regulations to carry out the bill. The regulations must (1) require compliance with USP 797; (2) require each sterile compounded preparation to be dispensed or administered in accordance with a prescription from an authorized

prescriber; (3) require a permit holder to ensure that personnel engaging in sterile compounding are trained and demonstrate competence in the safe handling and compounding of sterile preparations; and (4) include other specified requirements.

The board must inspect a permit holder with a frequency based on risk as established in regulations. Inspections must include a review, in accordance with board regulations, of quality assurance testing reports and microbial testing of a sampling of compounded preparations. The board may inspect a permit holder at any time to verify compliance or investigate a complaint. For nonresident permit holders, the board may rely on an inspection conducted by a designee of the board.

The board must determine, for purposes of reporting by a permit holder, the (1) adverse events and evidence of environmental contamination and (2) deficiencies, disciplinary actions, and changes in accreditation status. Any such required reporting must be done within five calendar days.

Subject to hearing provisions, the board may deny a permit to any applicant, reprimand a permit holder, place a permit holder on probation, or suspend or revoke a permit. Instead of or in addition to such disciplinary action, the board may impose a fine of up to $10,000 for any violation of the bill or related regulations. Each violation is grounds for a separate fine. All fines must be paid to the State Board of Pharmacy Fund. Before the board takes any disciplinary action, it must give the applicant or permit holder an opportunity for a hearing before the board.

The board must report on its website and make available to the public on request, within 5 calendar days after taking the action, information relating to a suspension or revocation of a permit and, within 30 calendar days after taking the action, information relating to any other formal action taken against an applicant or permit holder.

The board must maintain and submit annually to the Secretary of Health and Mental Hygiene specified information about each sterile compounding permit holder, including any disciplinary actions taken against the permit holder.

Any person who operates a sterile compounding facility without a permit is guilty of a misdemeanor and on conviction is subject to a fine of up to $1,000 and/or imprisonment for up to one year. Additionally, the board may impose a civil fine of up to $50,000 on any person who operates a sterile compounding facility without a permit, payable to the State Board of Pharmacy Fund.

Preparation and Distribution of Sterile Drug Products: A person that prepares and distributes a sterile drug product into or within the State is not required to hold a sterile compounding permit but must instead hold both a manufacturer or other permit from

FDA and a wholesale distributor permit from the board. A person may not distribute a sterile drug product in the State unless the drug is produced in a facility that holds a manufacturer or other permit designated by FDA or the person has a waiver from the board.

A wholesale distributor applicant or permit holder that prepares a sterile drug product must submit to the board a report of an inspection conducted by FDA or a board designee at the time of application and on renewal. The inspection must have been conducted within one year prior to the application and demonstrate compliance with applicable federal good manufacturing practice standards or USP 797. An applicant or permit holder is responsible for obtaining the required inspection.

Waivers: The board may waive any of the bill's requirements in accordance with regulations. The board may issue a waiver to a sterile compounding facility or a person that prepares and distributes a sterile drug product into or within Maryland under specified circumstances. A waiver may not exceed two years. A waiver may be renewed by the board. The board may rescind a waiver if the bill's requirements are not met. The board must post on its website any waivers issued, including information about the facility or person to whom the waiver was issued, the sterile compounded preparation or sterile drug product for which the waiver was issued, and the basis for and duration of the waiver. Board regulations must include specified requirements for documenting the administration to a patient of a sterile compounded preparation or sterile drug product obtained under a waiver.

Reporting Requirement: Uncodified language requires the board, by January 1, 2014, to report to the Governor and the General Assembly on the implementation of the bill.

Current Law: "Practice pharmacy" includes compounding, dispensing, or distributing prescription drugs and devices and compounding or prescribing nonprescription drugs or devices. A person must hold a pharmacy permit issued by the board to establish or operate a pharmacy in the State. A pharmacy permit authorizes the holder to establish and operate a pharmacy. Subject to hearing provisions, the board may suspend or revoke any pharmacy permit, if the pharmacy is conducted so as to endanger the public health or safety, violates any specified standards, or otherwise is not conducted in accordance with the law. A pharmacy permit authorizes a pharmacy to distribute drugs and devices.

Board regulations (Code of Maryland Regulations 10.34.19.01-16) govern licensed *pharmacies in Maryland* engaging in compounding or mixing sterile prescription solutions or suspensions to be administered parenterally or by irrigation, inhalation, or intraocular routes and compounding of radiopharmaceuticals, except in specified circumstances. These regulations do not apply to *nonresident* pharmacies or other facilities (such as a health care practitioner's office).

The compounding, preparation, and dispensing of compounded sterile preparations must be accomplished in a pharmacy environment subject to State and federal laws, regulations, and standards. The regulations specify special handling, packaging, labeling, and beyond-use dating; recordkeeping; batch preparation; minimum requirements for facilities, equipment, supplies, policies and procedures, and attire; training of staff, patients, and caregivers; and quality assurance. USP 797 requirements are incorporated by reference.

Wholesale distributors – which may include manufacturers, warehouses, and some retail pharmacies – must be issued a permit by the board before engaging in the wholesale distribution of prescription drugs or prescription devices into, out of, or within the State. As a part of the initial application process, both a representative from the applicant's place of business and the representative's immediate supervisor must submit fingerprints for the purposes of a criminal history records check (CHRC). Within 30 days after the board receives a completed application, including the results of all required CHRCs, the board must notify the applicant of the board's acceptance or rejection of the application. To obtain a permit, a wholesale distributor must also obtain either a surety bond (made payable to the board) of $100,000 or other equivalent means of security acceptable to the State (*e.g.*, an irrevocable letter of credit or a deposit in a trust account or financial institution). If the applicant's annual gross receipts for the previous tax year total less than $10 million, the requisite surety bond amount is reduced to $50,000. The purpose of the surety bond is to secure the payment of any fines or penalties imposed by the board and any fees and costs incurred by the State relating to the permit.

Background: According to FDA, compounding can serve an important public health need if a patient cannot be treated with an FDA-approved medication. For example, compounding may occur if a patient needs a medication without a certain dye due to an allergy or needs a drug in a liquid or suppository form that is not otherwise available. However, compounded drugs are not FDA-approved, and poor compounding practices can result in contamination or medications that do not contain the strength, quality, or purity required.

Compounding is under scrutiny by FDA because of the emergence of firms with pharmacy licenses making and distributing drugs outside the bounds of traditional pharmacy compounding that operate more like drug manufacturers that pharmacies. Some of the adverse event reports received by FDA associated with compounded medications have had devastating repercussions.

In fall 2012, an outbreak of fungal meningitis was linked to an injectable steroid medication produced by a sterile compounding facility in Massachusetts. More than 725 patients were infected in 20 states (including 26 patients in Maryland, 3 of whom subsequently died). Forty-eight deaths were linked to the fungal injections. From

November 2011 to April 2012, 33 eye surgery patients in 7 states suffered a rare fungal eye infection tied to injectable drug products made by a compounding pharmacy in Florida. Most of those patients suffered partial to severe vision loss.

Federal legislation, the Verifying Authority and Legality in Drug (VALID) Compounding Act of 2012 (H.R. 6584), was introduced in the U.S. Congress in November 2012. The legislation is intended to preserve state regulatory authority for traditional small compounding pharmacy activities and ensure that compounding pharmacies operating as drug manufacturers are regulated by FDA as drug manufacturers.

According to the National Association of Boards of Pharmacy, many state boards of pharmacy (including Maryland) have adopted regulations specific to sterile compounding. At least 23 boards require compliance with USP 797, while 7 additional boards require compliance with some or most of USP 797 standards. Some boards have implemented special procedures for regulating compounding pharmacies, including performing and publicly reporting annual testing of drugs compounded by pharmacies (Missouri) and performing annual inspections prioritized according to patient risk and requiring permits (Florida).

In February 2013, both houses of the Virginia legislature passed legislation that clarifies the distinction between compounding and manufacturing and requires each pharmacist-in-charge or owner of a pharmacy engaging in sterile compounding to notify the Virginia Board of Pharmacy of the pharmacy's intention to dispense or otherwise deliver a compounded drug product into Virginia. This intention must be reaffirmed upon renewal of a pharmacy permit. Nonresident pharmacies must submit an inspection report that indicates that the pharmacy is in compliance with United States Pharmacopeia-National Formulary standards for pharmacies performing sterile and nonsterile compounding.

State Fiscal Effect: According to the board, at least 110 Maryland pharmacies currently perform sterile compounding under their pharmacy permits; however, it is unknown how many *nonresident* pharmacies perform sterile compounding or the number of *nonpharmacy sites* required to obtain permits under the bill. The board indicates that it will conduct a survey to determine which sites will be required to obtain a permit. At this time, the board anticipates that approximately 300 sites (including Maryland pharmacies) will be required to obtain a permit.

Once all sites are identified, the board will need to establish permit requirements; develop and promulgate regulations; and determine the adverse events, evidence of environmental contamination, deficiencies, disciplinary actions, and changes in accreditation status that must be reported by a permit holder. Before a permit may be issued, the board (or the

board's designee for nonresident facilities) must conduct an inspection of the sterile compounding facility. The board estimates that it could complete this work and begin issuing permits by April 1, 2014. Once issued, facilities must be inspected at intervals required by the board. Current law requires the board to inspect all 1,380 pharmacies in the State on an annual basis. In fiscal 2012, the board's four inspectors were able to complete 97% of all required inspections, largely because wholesale distributor inspections (which are done biennially) were not also required in that year. However, while these annual inspections review sterile compounding *records* for those pharmacies that perform sterile compounding, the bill requires more extensive regulation of sterile compounding and will require more complex inspections of a greater number of facilities that perform sterile compounding.

Thus, special fund expenditures for the State Board of Pharmacy increase by $363,325 in fiscal 2014, which accounts for the bill's July 1, 2013 effective date. This estimate reflects the cost of hiring two pharmacists to do field inspections of sterile compounding facilities, one laboratory scientist surveyor to review sterile compounding facility permit applications and review and interpret scientific reports from the facilities to ensure compliance, and one office services clerk to process applications and issue permits. It includes salaries, fringe benefits, one-time start-up costs (including purchase of two State automobiles), and ongoing operating expenses.

Positions	4
Salaries and Fringe Benefits	310,612
State Automobiles	29,068
One-time Start-up Costs	15,045
Other Operating Expenses	8,600
Total FY 2014 State Expenditures	**$363,325**

Future year expenditures reflect annual increases and employee turnover as well as annual increases in ongoing operating expenses.

Special fund revenues for the State Board of Pharmacy increase by an estimated $210,000 in fiscal 2014 from sterile compounding permit fees. This estimate reflects the 300 entities assumed to require a sterile compounding permit and a fee of $700 being charged (the same fee currently charged for an initial pharmacy permit). Future years reflect biennial renewal of permits as specified under the bill and reflect no increase in the number of permits held.

Special fund revenues also increase beginning in fiscal 2014 from fees for the issuance of additional wholesale distributor permits. A person that prepares and distributes sterile drug products into or within the State must have a wholesale distributor permit from the board, in addition to a manufacturer or other permit from FDA. The current fee for a

wholesale distributor permit is $1,750; however, the number of additional permits that may be issued is unknown.

Special fund revenues may also increase by a minimal amount beginning in fiscal 2014 from the board's authority to issue a civil fine of up to $50,000 on any person who operates a sterile compounding facility without a permit. Likewise, special fund revenues may increase minimally due to the imposition of fines against permit holders.

The board may have to raise fees to cover costs to implement the bill which, on a biennial basis, exceed revenues by approximately $500,000. The board notes it may be able to absorb approximately $200,000 of the costs associated with the bill (excluding the cost of the two pharmacist inspectors) using a portion of its fund balance, which is also anticipated to be used for other large-scale projects through fiscal 2017.

Additional Information

Prior Introductions: None.

Cross File: SB 896 (Senator Conway) - Education, Health, and Environmental Affairs.

Information Source(s): U.S. Centers for Disease Control and Prevention, U.S. Food and Drug Administration, National Association of Boards of Pharmacy, Department of Health and Mental Hygiene, Department of Legislative Services

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