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May 5, 2015

The Honorable Lawrence J. Hogan, Jr.
Governor of Maryland
State House
100 State Circle
Annapolis, Maryland 21401

RE: House Bill 745/Senate Bill 516, "Public Health – Overdose Response Program"

Dear Governor Hogan:

House Bill 745 and Senate Bill 516 are identical and are constitutional and legally sufficient. They are not, however, fully consistent with Senate Bill 626, which has been enacted into law as Chapter 44 of 2015. Thus, while we approve the bills for constitutionality and legal sufficiency, we recommend that consideration be given to harmonizing their provisions in future legislation.

House Bill 745 and Senate Bill 516 amend the law concerning the Overdose Response Program. They permit a physician or an advanced practice nurse with prescribing authority who issues a standing order for the prescribing and dispensing of naloxone, as permitted by the bills, to delegate the authority to dispense naloxone to a registered nurse who is employed by a local health department and completes a training program approved by the Department of Health and Mental Hygiene. *See* newly added § 13-3108(b)(2)(i). Registered nurses are not necessarily advanced practice nurses. Health Occupations Article, § 8-101(b). This authority may also be delegated to an employee or volunteer of a private or public entity who is authorized to conduct an educational training program in accordance with § 13-1304(d). *See* newly added § 13-3108(b)(2)(ii).

Chapter 44 also amends Health - General Article, § 31-3108. It permits a registered nurse to dispense naloxone to a certificate holder in a local health department if the registered nurse complies with the formulary developed under the Act and the requirements of Health Occupations Article, § 8-512, which is added by Chapter 44. Section 8-512 allows a registered nurse to personally prepare and dispense drugs and devices in a local health department for a variety of purposes including the Overdose Response Program. This provision also requires compliance with the formulary and completion of a training program, but also imposes requirements regarding the maintenance of records, storage and inventory with respect to drugs and devices, and receipt of a prescription from an authorized prescriber at a local health department. It does not require delegation of authority from a physician or advanced practice nurse with prescribing authority and does not appear to require that the registered nurse be employed by the local health department though the dispensing must take place there. Chapter 44 contains no immunity provisions at all.

House Bill 745 and Senate Bill 516 also provide a variety of immunities to the people involved in the distribution of naloxone. Employees and volunteers permitted to dispense under § 13-3108 are protected from actions based on their practice of medicine, registered nursing or pharmacy. An advanced practice nurse with prescribing authority is protected from disciplinary action based on the act of prescribing or dispensing naloxone. Physicians, advanced practice nurses with prescribing authority, and pharmacists are protected from civil suit based on their prescribing and dispensing naloxone. Finally, a person who dispenses naloxone in accordance with the subtitle is made “exempt from any laws that require a person to maintain a permit to dispense prescription drugs.” No immunity from suit is given to registered nurses who are not advanced practice nurses or to the employees and volunteers for their actions in dispensing naloxone under authority delegated by a physician or an advance practice nurse with prescribing authority.

Essentially Chapter 44 and House Bill 745 and Senate Bill 516 create separate authorizations for registered nurses to dispense naloxone; although these provisions are similar, they are also different in substantial ways. In addition, neither bill provides immunity protection for registered nurses who dispense naloxone, even though under Chapter 44 they may dispense without a delegation from another health care provider.

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Thus, while House Bill 745 and Senate Bill 516 are constitutional and legally sufficient, we recommend that consideration be given to bringing the provisions with respect to dispensing of naloxone by registered nurses into harmony in future legislation.

Sincerely,

A handwritten signature in black ink, appearing to read "Brian E. Frosh". The signature is fluid and cursive, with a large initial "B" and a long, sweeping underline.

Brian E. Frosh
Attorney General

BEF/KR/kk

cc: The Honorable John C. Wobensmith
Joseph M. Getty
Karl Aro