

Amendments to House Bill 512 – Drugs and Devices – Electronic Prescriptions-
Controlled Dangerous Substances (First Reading Bill)

Rationale

This bill seeks a change in Maryland law to mandate EPCS.

The FTC has a pending action against Surescripts, which provides EPCS and is a principal proponent of the bill, alleging that the company has monopolized electronic prescription services. A subsequent class action filed against Surescripts alleges that pharmacies pay between five and seventeen times what they would pay in a competitive marketplace for electronic prescription services. One of the proposed amendments seeks to ensure that the market for electronic prescription services is competitive before mandating EPSC in Maryland.

We also propose amendments that seek to preserve consumer choice and portability which current technology cannot support, according to Surescripts. Having a paper prescription allows consumers to price shop without the complications caused by current EPCS technology which fills the prescription upon receipt and simultaneously bills carriers. If the consumer chooses not to purchase because the price is lower at a second pharmacy, there cannot be electronic transfer to a second pharmacy or reversal of the claim without cancellation of the prescription. The consumer (in need of pain medication) would have to start all over again with the prescriber (who may not be readily available) in order to have a new EPCS sent to the second pharmacy. Similar problems occur if the pharmacy does not have the pain medication in stock, a frequent complaint of chronic pain patients.

The bill is silent about protecting consumers from problems that may interfere with portability, access and price shopping for prescribed controlled substances. The amendments expressly preserve the consumer's right to a written prescription until Surescripts or a competitor provides consumers with the ability to have a prescription forwarded to a pharmacy of the consumer's choosing.

Amendment #1

On page 6, in line 28, after "ELECTRONICALLY", insert "IF: (I) THE HEALTH PRACTITIONER HAS ADVISED THE PATIENT THEY MAY REQUEST A WRITTEN PRESCRIPTION; (II) THE PATIENT EXPRESSLY DECLINES A WRITTEN PRESCRIPTION; (III) THE PRICE IS COMPETITIVE AS DETERMINED BY THE MARYLAND HEALTH CARE COMMISSION; AND (IV) THE ELECTRONIC PRESCRIPTION MAY BE TRANSFERRED FROM THE DESIGNATED PHARMACY TO ANOTHER PHARMACY, WITHOUT DELAY OR COST, AT THE PATIENT'S REQUEST"

Amendment #2

On page 6, in line 28, after "SUBSTANCE", delete "ONLY" and in line 29, after "(l)", insert "THE PATIENT REQUESTS A WRITTEN PRESCRIPTION" and renumber subsequent subparts

Amendment #3

On page 11, in line 23, after "That", insert "THE MARYLAND INSURANCE ADMINISTRATION, THE MARYLAND HEALTH CARE COMMISSION, THE MARYLAND BOARD OF PHARMACY AND THE MARYLAND OFFICE OF THE ATTORNEY GENERAL SHALL CONVENE A WORKGROUP TO EVALUATE THE ADEQUACY OF CONSUMER AND MARKETPLACE PROTECTIONS FOR ELECTRONIC PRESCRIPTION SERVICES IN MARYLAND AND TO MAKE RECOMMENDATIONS, IF APPROPRIATE, TO STRENGTHEN STATUTORY AND REGULATORY PROTECTIONS.

SECTION 3. AND BE IT FURTHER ENACTED, THAT THIS ACT SHALL TAKE EFFECT JANUARY 1, 2023, CONTINGENT UPON THE MARYLAND HEALTH CARE COMMISSION'S DETERMINATION THAT PRICES FOR EPCS SERVICES ARE COMPETITIVE AND THAT THE MARKET IS COMPETITIVE. SECTION 2 OF THIS ACT SHALL REMAIN EFFECTIVE THROUGH JUNE 30, 2025. SECTION 2 OF THIS ACT, WITH NO FURTHER ACTION REQUIRED BY THE GENERAL ASSEMBLY, SHALL BE ABROGATED AND OF NO FURTHER FORCE AND EFFECT."