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Introduced and read first time: January 22, 2004  
Assigned to: Health and Government Operations

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A BILL ENTITLED

1 AN ACT concerning

2 **Public Health - Licensed Pharmacists - Emergency Contraception**  
3 **Dispensing Program**

4 FOR the purpose of establishing the Emergency Contraception Dispensing Program  
5 in the Department of Health and Mental Hygiene; providing for the purpose of  
6 the Program; authorizing the Department to adopt certain regulations, collect  
7 certain fees, issue and renew certificates to certain licensed pharmacists, and  
8 conduct and approve certain educational training programs; requiring that  
9 licensed pharmacists, to qualify for a certificate, complete certain educational  
10 training programs conducted by certain licensed physicians; requiring  
11 applicants for certificates to submit certain applications and pay a certain  
12 application fee; requiring the Department or certain entities to issue a  
13 certificate to certain licensed pharmacists; requiring the certificates to include  
14 certain information; providing for the replacement, duration, and renewal  
15 process of the certificates; authorizing licensed pharmacists who are certified to  
16 dispense emergency contraception without a certain prescription in accordance  
17 with certain procedures; requiring certain licensed pharmacists and physicians  
18 to develop a written protocol authorizing certain licensed pharmacists to  
19 dispense emergency contraception; requiring certain licensed pharmacists to  
20 follow a certain procedure prior to dispensing emergency contraception;  
21 requiring the Department to develop a certain fact sheet, in consultation with  
22 certain entities, to distribute to certain individuals; requiring certain licensed  
23 pharmacists to record the number of individuals receiving emergency  
24 contraception and to report the number at certain times to certain physicians;  
25 requiring review and modification of the protocol by certain physicians at  
26 certain times; providing certain procedures for the withdrawal of certain  
27 physicians from the protocol; providing that this Act does not affect, and may  
28 not be construed as affecting, the requirements of existing law relating to  
29 maintaining the confidentiality of medical records; prohibiting a cause of action  
30 to arise against certain licensed pharmacists or certain licensed physicians  
31 except under certain circumstances; providing that this Act does not affect, and

1 may not be construed as affecting, certain immunities or defenses to which  
2 licensed pharmacists or licensed physicians may be entitled; providing that this  
3 Act may not be construed to create a certain duty and that licensed pharmacists  
4 or licensed physicians may not be held liable for certain reasons; requiring  
5 certain regulations be adopted within a certain period of time; defining certain  
6 terms; and generally relating to licensed pharmacists and the Emergency  
7 Contraception Dispensing Program.

8 BY adding to  
9 Article - Health - General  
10 Section 13-2101 through 13-2109, inclusive, to be under the new subtitle  
11 "Subtitle 21. Emergency Contraception Dispensing Program"  
12 Annotated Code of Maryland  
13 (2000 Replacement Volume and 2003 Supplement)

14 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
15 MARYLAND, That the Laws of Maryland read as follows:

16 **Article - Health - General**

17 **SUBTITLE 21. EMERGENCY CONTRACEPTION DISPENSING PROGRAM.**

18 13-2101.

19 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS  
20 INDICATED.

21 (B) "CERTIFICATE" MEANS A CERTIFICATE ISSUED BY THE DEPARTMENT OR A  
22 PRIVATE OR PUBLIC ENTITY TO DISPENSE EMERGENCY CONTRACEPTION.

23 (C) (1) "EMERGENCY CONTRACEPTION" MEANS MEDICATION THAT  
24 PREVENTS PREGNANCY AFTER SEXUAL INTERCOURSE.

25 (2) "EMERGENCY CONTRACEPTION" DOES NOT INCLUDE  
26 ABORTIFACIENTS.

27 (D) "PROGRAM" MEANS THE EMERGENCY CONTRACEPTION DISPENSING  
28 PROGRAM.

29 13-2102.

30 (A) THERE IS AN EMERGENCY CONTRACEPTION DISPENSING PROGRAM IN  
31 THE DEPARTMENT.

32 (B) THE PURPOSE OF THE PROGRAM IS TO PROVIDE A MEANS OF  
33 AUTHORIZING LICENSED PHARMACISTS TO DISPENSE EMERGENCY  
34 CONTRACEPTION.

1 13-2103.

2 THE DEPARTMENT SHALL:

3 (1) ADOPT REGULATIONS FOR THE ADMINISTRATION OF THE PROGRAM;

4 (2) COLLECT FEES NECESSARY FOR THE ADMINISTRATION OF THE  
5 PROGRAM;

6 (3) ISSUE AND RENEW CERTIFICATES TO LICENSED PHARMACISTS WHO  
7 MEET THE REQUIREMENTS OF THIS SUBTITLE; AND

8 (4) (I) CONDUCT EDUCATIONAL TRAINING PROGRAMS DESCRIBED  
9 UNDER § 13-2104 OF THIS SUBTITLE; AND

10 (II) APPROVE EDUCATIONAL TRAINING PROGRAMS CONDUCTED BY  
11 OTHER STATE AGENCIES OR PRIVATE ENTITIES.

12 13-2104.

13 (A) TO QUALIFY FOR A CERTIFICATE, A LICENSED PHARMACIST SHALL  
14 SUCCESSFULLY COMPLETE AN EDUCATIONAL TRAINING PROGRAM APPROVED BY  
15 THE DEPARTMENT.

16 (B) EDUCATIONAL TRAINING PROGRAMS REQUIRED UNDER THIS SECTION  
17 SHALL BE CONDUCTED BY A PHYSICIAN LICENSED TO PRACTICE MEDICINE UNDER  
18 TITLE 14 OF THE HEALTH OCCUPATIONS ARTICLE.

19 (C) EDUCATIONAL TRAINING PROGRAMS REQUIRED UNDER THIS SECTION  
20 SHALL INCLUDE:

21 (1) CONDUCT OF SENSITIVE COMMUNICATIONS;

22 (2) QUALITY ASSURANCE;

23 (3) REFERRAL TO ADDITIONAL SERVICES; AND

24 (4) DOCUMENTATION.

25 13-2105.

26 AN APPLICANT FOR A CERTIFICATE SHALL:

27 (1) SUBMIT AN APPLICATION TO THE DEPARTMENT OR A PRIVATE OR  
28 PUBLIC ENTITY ON THE FORM THAT THE DEPARTMENT REQUIRES; AND

29 (2) PAY TO THE DEPARTMENT OR A PRIVATE OR PUBLIC ENTITY THE  
30 APPLICATION FEE SET BY THE DEPARTMENT.

1 13-2106.

2 (A) THE DEPARTMENT OR A PRIVATE OR PUBLIC ENTITY SHALL ISSUE A  
3 CERTIFICATE TO ANY LICENSED PHARMACIST WHO MEETS THE REQUIREMENTS OF  
4 THIS SUBTITLE.

5 (B) EACH CERTIFICATE SHALL INCLUDE:

6 (1) THE FULL NAME OF THE CERTIFICATE HOLDER; AND

7 (2) A SERIAL NUMBER.

8 (C) A REPLACEMENT CERTIFICATE MAY BE ISSUED TO REPLACE A LOST,  
9 DESTROYED, OR MUTILATED CERTIFICATE IF THE CERTIFICATE HOLDER PAYS THE  
10 CERTIFICATE REPLACEMENT FEE.

11 (D) (1) THE CERTIFICATE SHALL BE VALID FOR 3 YEARS.

12 (2) IN ORDER TO RENEW THE CERTIFICATE FOR AN ADDITIONAL 3  
13 YEARS, THE APPLICANT SHALL:

14 (I) SUCCESSFULLY COMPLETE A REFRESHER TRAINING PROGRAM  
15 APPROVED BY THE DEPARTMENT; OR

16 (II) DEMONSTRATE PROFICIENCY TO THE DEPARTMENT OR A  
17 PRIVATE OR PUBLIC ENTITY ISSUING CERTIFICATES UNDER THIS SUBTITLE.

18 13-2107.

19 (A) A LICENSED PHARMACIST WHO IS CERTIFIED MAY DISPENSE EMERGENCY  
20 CONTRACEPTION WITHOUT A PRESCRIPTION FROM A LICENSED PHYSICIAN, IF THE  
21 PHARMACIST FOLLOWS A WRITTEN PROTOCOL DEVELOPED BY THE PHARMACIST  
22 AND A LICENSED PHYSICIAN WHO IS ACTING WITHIN THE PHYSICIAN'S SCOPE OF  
23 PRACTICE.

24 (B) THE PROTOCOL DEVELOPED UNDER SUBSECTION (A) OF THIS SECTION  
25 SHALL:

26 (1) AUTHORIZE THE PHARMACIST TO DISPENSE EMERGENCY  
27 CONTRACEPTION TO WOMEN WHO HAVE RECENTLY HAD UNPROTECTED SEXUAL  
28 INTERCOURSE OR CONTRACEPTIVE FAILURE, AND WHO WISH TO PREVENT  
29 PREGNANCY; AND

30 (2) DEFINE, ON THE BASIS OF THE PHYSICIAN'S MEDICAL JUDGMENT  
31 AND THE AVAILABLE SCIENTIFIC EVIDENCE, THE MAXIMUM NUMBER OF DAYS  
32 AFTER UNPROTECTED SEXUAL INTERCOURSE OR CONTRACEPTIVE FAILURE THAT  
33 THE PHARMACIST MAY DISPENSE EMERGENCY CONTRACEPTION.

34 (C) THE PHARMACIST AND PHYSICIAN SHALL EACH MAINTAIN A COPY OF THE  
35 WRITTEN PROTOCOL IN THEIR OFFICE FILES.

1 (D) PRIOR TO DISPENSING EMERGENCY CONTRACEPTION, THE PHARMACIST  
2 SHALL:

3 (1) SCREEN THE WOMAN FOR APPROPRIATENESS OF EMERGENCY  
4 CONTRACEPTION IN ACCORDANCE WITH THE WRITTEN PROTOCOL;

5 (2) PROVIDE THE WOMAN WITH ANY PRINTED MATERIALS AND  
6 PACKAGE INSERTS THAT ACCOMPANY THE EMERGENCY CONTRACEPTION; AND

7 (3) PROVIDE THE WOMAN WITH A STANDARDIZED FACT SHEET THAT  
8 INCLUDES INFORMATION ON:

9 (I) INDICATIONS FOR USE OF THE DRUG;

10 (II) APPROPRIATE METHODS FOR USING THE DRUG; AND

11 (III) THE NEED FOR MEDICAL FOLLOW-UP.

12 (E) (1) THE DEPARTMENT SHALL DEVELOP THE FACT SHEET REQUIRED  
13 UNDER SUBSECTION (D)(3) OF THIS SECTION IN CONSULTATION WITH THE STATE  
14 BOARD OF PHARMACY, THE AMERICAN COLLEGE OF OBSTETRICIANS AND  
15 GYNECOLOGISTS, THE MARYLAND PHARMACISTS ASSOCIATION, AND OTHER HEALTH  
16 CARE ORGANIZATIONS.

17 (2) THIS SUBSECTION DOES NOT PRECLUDE THE USE OF EXISTING  
18 PUBLICATIONS DEVELOPED BY NATIONALLY RECOGNIZED MEDICAL  
19 ORGANIZATIONS.

20 (F) THE PHARMACIST SHALL RECORD THE NUMBER OF WOMEN RECEIVING  
21 EMERGENCY CONTRACEPTION FROM THE PHARMACIST, AND SHALL FORWARD  
22 THOSE NUMBERS QUARTERLY TO THE PHYSICIAN.

23 (G) (1) THE PHYSICIAN SHALL MODIFY THE PROTOCOL AS NEEDED IN  
24 ACCORDANCE WITH THE PHYSICIAN'S MEDICAL JUDGMENT.

25 (2) THE PHYSICIAN SHALL REVIEW THE PROTOCOL AT LEAST  
26 ANNUALLY TO DETERMINE WHETHER MODIFICATIONS ARE APPROPRIATE.

27 (H) THE PHYSICIAN MAY WITHDRAW FROM PARTICIPATION IN THE PROTOCOL  
28 AT ANY TIME BY PROVIDING WRITTEN NOTICE TO THE PHARMACIST.

29 13-2108.

30 (A) A CAUSE OF ACTION MAY NOT ARISE AGAINST A LICENSED PHARMACIST  
31 CERTIFIED UNDER THIS SUBTITLE FOR ANY ACT OR OMISSION WHEN THE LICENSED  
32 PHARMACIST IS ACTING IN GOOD FAITH WHILE DISPENSING EMERGENCY  
33 CONTRACEPTION, EXCEPT WHERE THE CONDUCT OF THE CERTIFIED LICENSED  
34 PHARMACIST AMOUNTS TO GROSS NEGLIGENCE, WILLFUL OR WANTON  
35 MISCONDUCT, OR INTENTIONALLY TORTIOUS CONDUCT.

1 (B) A CAUSE OF ACTION MAY NOT ARISE AGAINST A LICENSED PHYSICIAN  
2 WHO DEVELOPS A PROTOCOL UNDER THIS SUBTITLE FOR ANY ACT OR OMISSION  
3 WHEN THE LICENSED PHYSICIAN IS ACTING IN GOOD FAITH, EXCEPT WHERE THE  
4 CONDUCT OF THE LICENSED PHYSICIAN AMOUNTS TO GROSS NEGLIGENCE,  
5 WILLFUL OR WANTON MISCONDUCT, OR INTENTIONALLY TORTIOUS CONDUCT.

6 (C) THIS SUBTITLE DOES NOT AFFECT, AND MAY NOT BE CONSTRUED AS  
7 AFFECTING, ANY IMMUNITIES FROM CIVIL LIABILITY OR DEFENSES ESTABLISHED  
8 BY ANY OTHER PROVISIONS OF THE CODE OR BY COMMON LAW TO WHICH A  
9 LICENSED PHARMACIST OR LICENSED PHYSICIAN MAY BE ENTITLED.

10 (D) THIS SUBTITLE DOES NOT AFFECT, AND MAY NOT BE CONSTRUED AS  
11 AFFECTING, THE REQUIREMENTS OF EXISTING LAW RELATING TO MAINTAINING  
12 THE CONFIDENTIALITY OF MEDICAL RECORDS.

13 13-2109.

14 (A) THIS SUBTITLE MAY NOT BE CONSTRUED TO CREATE A DUTY FOR ANY  
15 LICENSED PHARMACIST TO OBTAIN A CERTIFICATE UNDER THIS SUBTITLE, AND A  
16 LICENSED PHARMACIST MAY NOT BE HELD CIVILLY LIABLE FOR FAILING TO OBTAIN  
17 A CERTIFICATE UNDER THIS SUBTITLE.

18 (B) THIS SUBTITLE MAY NOT BE CONSTRUED TO CREATE A DUTY FOR ANY  
19 LICENSED PHYSICIAN TO DEVELOP A PROTOCOL UNDER THIS SUBTITLE, AND A  
20 LICENSED PHYSICIAN MAY NOT BE HELD CIVILLY LIABLE FOR FAILING TO DEVELOP  
21 A PROTOCOL UNDER THIS SUBTITLE.

22 (C) A LICENSED PHARMACIST MAY NOT BE HELD CIVILLY LIABLE IN ANY  
23 ACTION ARISING FROM OR IN CONNECTION WITH THE DISPENSING OF EMERGENCY  
24 CONTRACEPTION BY THE LICENSED PHARMACIST SOLELY BECAUSE THE LICENSED  
25 PHARMACIST DID NOT POSSESS A CERTIFICATE UNDER THIS SUBTITLE.

26 SECTION 2. AND BE IT FURTHER ENACTED, That the regulations  
27 required by this Act shall be adopted within 6 months of the effective date of this Act.

28 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take  
29 effect October 1, 2004.