

Department of Legislative Services
Maryland General Assembly
2004 Session

FISCAL AND POLICY NOTE

Senate Bill 247

(Senator Grosfeld, *et al.*)

Education, Health, and Environmental Affairs

Public Health - Licensed Pharmacists - Dispensing Emergency Contraception

This bill authorizes pharmacists and physicians to enter into arrangements concerning the dispensing of emergency contraception. A licensed pharmacist is authorized to dispense emergency contraception if the pharmacist has an approved arrangement with a physician. The Board of Pharmacy and the Maryland State Board of Physicians (MBP) are required to jointly adopt arrangement regulations within six month's of the bill's effective date.

Fiscal Summary

State Effect: Special fund revenues could increase by \$3,800 in FY 2005 which reflects 150 approved arrangements, with each pharmacist charged a \$25 fee. Special fund expenditures could increase by \$1,300 in FY 2005 for related board costs. Future year revenues assume a two-year renewal cycle and assume 200 arrangements each in FY 2006 and FY 2007, increasing to 250 arrangements each in FY 2008 and FY 2009. Future year expenditures reflect annualization and inflation.

(in dollars)	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
SF Revenue	\$3,800	\$5,000	\$5,000	\$6,300	\$6,300
SF Expenditure	1,300	1,400	1,400	1,400	1,400
Net Effect	\$2,500	\$3,600	\$3,600	\$4,900	\$4,900

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

Local Effect: None.

Small Business Effect: Meaningful to the extent that pharmacists dispense more emergency contraception as a result of this bill.

Analysis

Bill Summary: Arrangements may be initiated by either a licensed pharmacist or a licensed physician and are valid for two years from the date of final approval by the two boards unless renewed in accordance with regulations adopted by the two boards. Emergency contraception is defined as a method of preventing pregnancy and does not include abortifacients (a substance or device used to induce abortion).

The two boards are required to adopt regulations that: (1) define the criteria for the establishment of an arrangement; (2) establish guidelines concerning an arrangement, including communication, documentation, and other relevant factors; and (3) establish a procedure to allow for the approval, modification, continuation, or disapproval of an arrangement by the two boards.

This bill does not supersede criminal law related to the manufacture, distribution, or dispensing of a controlled dangerous substance.

A cause of action may not arise against a licensed pharmacist or a licensed physician who enter into an arrangement for any act or omission when the pharmacist or physician is acting in good faith, except where conduct amounts to gross negligence, willful or wanton misconduct, or intentionally tortious conduct. This does not affect, and may not be construed as affecting, any immunities from civil liability or defenses established by any other provisions of the Annotated Code or by common law to which a licensed pharmacist or licensed physician may be entitled.

This bill may not be construed as creating a duty for any licensed pharmacist or licensed physician to enter into an arrangement and they may not be held civilly liable for failing to do so.

A licensed pharmacist may not be held civilly liable in any action arising from or in connection with the pharmacist's dispensing of emergency contraception solely because the pharmacist did not enter into an arrangement.

Current Law: Pharmacists and physicians are not authorized under statute to enter into arrangements for the dispensing or provision of emergency contraceptives. Pharmacists can dispense drugs only on a health practitioner's written or oral prescription. A pharmacist may not dispense a drug on an oral prescription unless the pharmacist writes out and files the prescription. A pharmacist may not refill and dispense a prescription unless it is authorized by the health practitioner.

Background: Emergency contraception prevents pregnancy by stopping ovaries from releasing eggs, an egg from being fertilized by sperm, or a fertilized egg from attaching

to the wall of the uterus, according to the National Women's Health Information Center. The two types of emergency contraception available in the U.S. are emergency contraception pills and intrauterine devices. Emergency contraception pills are taken in two doses, 12 hours apart and are most effective if taken within 72 hours of unprotected sex. An intrauterine device must be placed within a woman's uterus within seven days after unprotected sex to be effective.

California, Hawaii, and Washington have enacted laws providing access to emergency contraception without a prescription by certified pharmacists.

Plan B emergency contraception that prevents ovulation and egg fertilization should be available without a doctor's prescription, according to testimony by a panel of experts to the U.S. Food and Drug Administration (FDA). FDA is expected to decide whether to accept the experts' advice in May.

State Fiscal Effect: Special fund revenues for the Board of Pharmacy could increase by \$3,750 in fiscal 2005, which reflects the bill's October 1, 2004 effective date. The information and assumptions used in calculating the estimate are stated below:

- 150 physician-pharmacist arrangements in the first year, 200 arrangements in the second year, and 50 additional arrangements every year thereafter;
- each arrangement and renewal is subject to a \$25 fee paid for by the pharmacist; and
- biennial renewal of arrangements.

Special fund expenditures could increase by \$1,326 in fiscal 2005 to cover per diem and travel expenses for a committee of two members of each board to meet to develop regulations and consider whether to approve arrangements. Existing Board of Pharmacy and MBP staff could support the committee.

Future year revenues assume: 200 new physician-pharmacist arrangements in fiscal 2006; 150 renewing and 50 new arrangements in fiscal 2007; 200 renewing and 50 new arrangements in fiscal 2008; and 200 renewing and 50 new arrangements in fiscal 2009. The estimated number of arrangements is based on the Department of Health and Mental Hygiene's Family Health Administration's estimate of participating pharmacists for SB 248/HB 204, which would certify licensed pharmacists to dispense emergency contraception.

Future year expenditures assume annualization and inflation.

Additional Information

Prior Introductions: SB 354 of 2003 received an unfavorable report by the Senate Education, Health, and Environmental Affairs Committee. Its cross file, HB 615, passed the House but received an unfavorable report by the same Senate committee.

Cross File: HB 203 is listed as the cross file but it is not identical.

Information Source(s): Department of Health and Mental Hygiene; National Women's Health Information Center; "Contraceptive pill bill OK'd: Pharmacists may sell birth control designed for morning-after use without a prescription," *Honolulu Star-Bulletin Hawaii News*, July 11, 2003; "Morning after pill gets nod from FDA: Non-prescription use safe, panel told," *Washington Post*, December 17, 2003; "FDA postpones morning-after pill decision," *Baltimore Sun*, February 14, 2004; Department of Legislative Services

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