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By: **Senators Grosfeld, Britt, Conway, Exum, Forehand, Frosh, Garagiola, Gladden, Hollinger, Jones, Kasemeyer, Kelley, Kramer, Lawlah, Pinsky, Ruben, and Teitelbaum**

Introduced and read first time: February 4, 2005  
Assigned to: Education, Health, and Environmental Affairs

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Committee Report: Favorable with amendments  
Senate action: Adopted with floor amendments  
Read second time: March 20, 2005

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CHAPTER \_\_\_\_\_

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 the Department to develop a written protocol authorizing certain licensed  
19 pharmacists to dispense emergency contraception; requiring certain licensed  
20 pharmacists to follow a certain procedure prior to dispensing emergency  
21 contraception; requiring the Department to develop a certain fact ~~sheet~~ sheets,  
22 in consultation with certain entities, to distribute to certain individuals;  
23 requiring certain licensed pharmacists to record the number of individuals  
24 receiving emergency contraception and to report the number at certain times to  
25 ~~certain physicians~~ the Department; requiring review and modification of the  
26 protocol by ~~certain physicians~~ the Department at certain times; ~~providing~~

1 ~~certain procedures for the withdrawal of certain physicians from the protocol;~~  
 2 providing that this Act does not affect, and may not be construed as affecting,  
 3 the requirements of existing law relating to maintaining the confidentiality of  
 4 medical records; prohibiting a cause of action to arise against certain licensed  
 5 pharmacists ~~or certain licensed physicians~~ except under certain circumstances;  
 6 providing that this Act does not affect, and may not be construed as affecting,  
 7 certain immunities or defenses to which licensed pharmacists ~~or licensed~~  
 8 ~~physicians~~ may be entitled; providing that this Act may not be construed to  
 9 ~~create a certain duty and that licensed pharmacists or licensed physicians may~~  
 10 ~~not be held liable for certain reasons~~ require a licensed pharmacist to obtain a  
 11 certain certificate or participate in a certain program; establishing that a  
 12 licensed pharmacist may not be required to dispense emergency contraception  
 13 or refer a person to a source for emergency contraception; establishing that a  
 14 licensed pharmacist is not subject to certain civil liability or certain actions for a  
 15 certain refusal; requiring certain regulations be adopted within a certain period  
 16 of time; defining certain terms; and generally relating to licensed pharmacists  
 17 and the Emergency Contraception Dispensing Program.

18 BY adding to

19 Article - Health - General

20 Section 13-2101 through 13-2109, inclusive, to be under the new subtitle

21 "Subtitle 21. Emergency Contraception Dispensing Program"

22 Annotated Code of Maryland

23 (2000 Replacement Volume and 2004 Supplement)

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

26 **Article - Health - General**

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

28 13-2101.

29 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS  
 30 INDICATED.

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

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

35 (2) "EMERGENCY CONTRACEPTION" DOES NOT INCLUDE  
 36 ABORTIFACIENTS.

37 (D) "PROGRAM" MEANS THE EMERGENCY CONTRACEPTION DISPENSING  
 38 PROGRAM.

1 13-2102.

2 (A) THERE IS AN EMERGENCY CONTRACEPTION DISPENSING PROGRAM IN  
3 THE DEPARTMENT.

4 (B) THE PURPOSE OF THE PROGRAM IS TO PROVIDE A MEANS OF  
5 AUTHORIZING LICENSED PHARMACISTS TO DISPENSE EMERGENCY  
6 CONTRACEPTION.

7 13-2103.

8 THE DEPARTMENT SHALL:

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

10 (2) COLLECT FEES NECESSARY FOR THE ADMINISTRATION OF THE  
11 PROGRAM;

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

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

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

18 13-2104.

19 (A) TO QUALIFY FOR A CERTIFICATE, A LICENSED PHARMACIST SHALL  
20 SUCCESSFULLY COMPLETE AN EDUCATIONAL TRAINING PROGRAM APPROVED BY  
21 THE DEPARTMENT.

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

25 ~~(C)~~ (B) EDUCATIONAL TRAINING PROGRAMS REQUIRED UNDER THIS  
26 SECTION SHALL INCLUDE:

27 (1) CONDUCT OF SENSITIVE COMMUNICATIONS;

28 (2) QUALITY ASSURANCE;

29 (3) REFERRAL TO ADDITIONAL SERVICES; AND

30 (4) DOCUMENTATION.

1 13-2105.

2 AN APPLICANT FOR A CERTIFICATE SHALL:

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

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

7 13-2106.

8 (A) THE DEPARTMENT OR A PRIVATE OR PUBLIC ENTITY SHALL ISSUE A  
9 CERTIFICATE TO ANY LICENSED PHARMACIST WHO MEETS THE REQUIREMENTS OF  
10 THIS SUBTITLE.

11 (B) EACH CERTIFICATE SHALL INCLUDE:

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

13 (2) A SERIAL NUMBER.

14 (C) A REPLACEMENT CERTIFICATE MAY BE ISSUED TO REPLACE A LOST,  
15 DESTROYED, OR MUTILATED CERTIFICATE IF THE CERTIFICATE HOLDER PAYS THE  
16 CERTIFICATE REPLACEMENT FEE.

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

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

20 (I) SUCCESSFULLY COMPLETE A REFRESHER TRAINING PROGRAM  
21 APPROVED BY THE DEPARTMENT; OR

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

24 13-2107.

25 (A) A LICENSED PHARMACIST WHO IS CERTIFIED MAY DISPENSE EMERGENCY  
26 CONTRACEPTION WITHOUT A PRESCRIPTION FROM A LICENSED PHYSICIAN, IF THE  
27 PHARMACIST FOLLOWS A WRITTEN PROTOCOL DEVELOPED BY THE ~~PHARMACIST~~  
28 ~~AND A LICENSED PHYSICIAN WHO IS ACTING WITHIN THE PHYSICIAN'S SCOPE OF~~  
29 ~~PRACTICE DEPARTMENT.~~

30 (B) THE PROTOCOL DEVELOPED UNDER SUBSECTION (A) OF THIS SECTION  
31 SHALL:

32 (1) AUTHORIZE THE PHARMACIST TO DISPENSE EMERGENCY  
33 CONTRACEPTION TO WOMEN WHO HAVE RECENTLY HAD UNPROTECTED SEXUAL

1 INTERCOURSE OR CONTRACEPTIVE FAILURE, AND WHO WISH TO PREVENT  
2 PREGNANCY; AND

3 (2) ~~DEFINE, ON THE BASIS OF THE PHYSICIAN'S MEDICAL JUDGMENT~~  
4 ~~AND THE AVAILABLE SCIENTIFIC EVIDENCE,~~ THE MAXIMUM NUMBER OF DAYS  
5 AFTER UNPROTECTED SEXUAL INTERCOURSE OR CONTRACEPTIVE FAILURE THAT  
6 THE PHARMACIST MAY DISPENSE EMERGENCY CONTRACEPTION.

7 (C) THE PHARMACIST ~~AND PHYSICIAN~~ SHALL EACH MAINTAIN A COPY OF THE  
8 WRITTEN PROTOCOL IN ~~THEIR~~ THE PHARMACIST'S OFFICE FILES.

9 (D) PRIOR TO DISPENSING EMERGENCY CONTRACEPTION, THE PHARMACIST  
10 SHALL:

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

13 (2) PROVIDE THE WOMAN WITH ANY PRINTED MATERIALS AND  
14 PACKAGE INSERTS THAT ACCOMPANY THE EMERGENCY CONTRACEPTION; ~~AND~~

15 (3) PROVIDE THE WOMAN WITH A STANDARDIZED FACT SHEET THAT  
16 INCLUDES:

17 (I) INFORMATION ON:

18 (⊕) 1. INDICATIONS FOR USE OF THE DRUG;

19 (⊕) 2. APPROPRIATE METHODS FOR USING THE DRUG; AND

20 (⊕) 3. THE NEED FOR MEDICAL FOLLOW-UP; AND

21 (II) TO THE EXTENT PRACTICABLE, A LIST, PROVIDED BY THE  
22 STATE BOARD OF PHYSICIANS, OF THE NAMES OF THE PRACTICING GYNECOLOGISTS  
23 IN THE COUNTY IN WHICH THE WOMAN IS RECEIVING THE EMERGENCY  
24 CONTRACEPTION; AND

25 (4) PROVIDE THE WOMAN WITH A STANDARDIZED FACT SHEET THAT  
26 INCLUDES INFORMATION ON THE RISKS AND EFFECTS OF SEXUALLY TRANSMITTED  
27 DISEASES.

28 (E) (1) THE DEPARTMENT SHALL DEVELOP THE FACT ~~SHEET SHEETS~~  
29 REQUIRED UNDER SUBSECTION (D)(3) AND (4) OF THIS SECTION IN CONSULTATION  
30 WITH THE STATE BOARD OF PHARMACY, THE AMERICAN COLLEGE OF  
31 OBSTETRICIANS AND GYNECOLOGISTS, THE MARYLAND PHARMACISTS  
32 ASSOCIATION, AND OTHER HEALTH CARE ORGANIZATIONS.

33 (2) THIS SUBSECTION DOES NOT PRECLUDE THE USE OF EXISTING  
34 PUBLICATIONS DEVELOPED BY NATIONALLY RECOGNIZED MEDICAL  
35 ORGANIZATIONS.

1 (F) THE PHARMACIST SHALL RECORD THE NUMBER OF WOMEN RECEIVING  
2 EMERGENCY CONTRACEPTION FROM THE PHARMACIST, AND SHALL FORWARD  
3 THOSE NUMBERS QUARTERLY TO THE PHYSICIAN DEPARTMENT.

4 (G) (1) THE PHYSICIAN DEPARTMENT SHALL MODIFY THE PROTOCOL AS  
5 NEEDED ~~IN ACCORDANCE WITH THE PHYSICIAN'S MEDICAL JUDGMENT~~.

6 (2) THE PHYSICIAN DEPARTMENT SHALL REVIEW THE PROTOCOL AT  
7 LEAST ANNUALLY TO DETERMINE WHETHER MODIFICATIONS ARE APPROPRIATE.

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

10 13-2108.

11 (A) A CAUSE OF ACTION MAY NOT ARISE AGAINST A LICENSED PHARMACIST  
12 CERTIFIED UNDER THIS SUBTITLE FOR ANY ACT OR OMISSION WHEN THE LICENSED  
13 PHARMACIST IS ACTING IN GOOD FAITH WHILE DISPENSING EMERGENCY  
14 CONTRACEPTION, EXCEPT WHERE THE CONDUCT OF THE CERTIFIED LICENSED  
15 PHARMACIST AMOUNTS TO GROSS NEGLIGENCE, WILLFUL OR WANTON  
16 MISCONDUCT, OR INTENTIONALLY TORTIOUS CONDUCT.

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

22 ~~(C)~~ (B) THIS SUBTITLE DOES NOT AFFECT, AND MAY NOT BE CONSTRUED AS  
23 AFFECTING, ANY IMMUNITIES FROM CIVIL LIABILITY OR DEFENSES ESTABLISHED  
24 BY ANY OTHER PROVISIONS OF THE CODE OR BY COMMON LAW TO WHICH A  
25 LICENSED PHARMACIST ~~OR LICENSED PHYSICIAN~~ MAY BE ENTITLED.

26 ~~(D)~~ (C) THIS SUBTITLE DOES NOT AFFECT, AND MAY NOT BE CONSTRUED AS  
27 AFFECTING, THE REQUIREMENTS OF EXISTING LAW RELATING TO MAINTAINING  
28 THE CONFIDENTIALITY OF MEDICAL RECORDS.

29 13-2109.

30 ~~(A)~~ (A) THIS SUBTITLE MAY NOT BE CONSTRUED TO ~~CREATE A DUTY FOR~~  
31 REQUIRE ANY LICENSED PHARMACIST TO OBTAIN A CERTIFICATE UNDER THIS  
32 SUBTITLE, ~~AND A LICENSED PHARMACIST MAY NOT BE HELD CIVILLY LIABLE FOR~~  
33 FAILING TO OBTAIN A CERTIFICATE UNDER THIS SUBTITLE OR PARTICIPATE IN THE  
34 PROGRAM.

35 ~~(B)~~ THIS SUBTITLE MAY NOT BE CONSTRUED TO CREATE A DUTY FOR ANY  
36 ~~LICENSED PHYSICIAN TO DEVELOP A PROTOCOL UNDER THIS SUBTITLE, AND A~~  
37 ~~LICENSED PHYSICIAN MAY NOT BE HELD CIVILLY LIABLE FOR FAILING TO DEVELOP~~  
38 ~~A PROTOCOL UNDER THIS SUBTITLE.~~

1 ~~(C) A LICENSED PHARMACIST MAY NOT BE HELD CIVILLY LIABLE IN ANY~~  
2 ~~ACTION ARISING FROM OR IN CONNECTION WITH THE DISPENSING OF EMERGENCY~~  
3 ~~CONTRACEPTION BY THE LICENSED PHARMACIST SOLELY BECAUSE THE LICENSED~~  
4 ~~PHARMACIST DID NOT POSSESS A CERTIFICATE UNDER THIS SUBTITLE.~~

5 (B) (1) A LICENSED PHARMACIST MAY NOT BE REQUIRED TO DISPENSE  
6 EMERGENCY CONTRACEPTION, OR REFER A PERSON TO ANY SOURCE FOR  
7 EMERGENCY CONTRACEPTION.

8 (2) THE REFUSAL OF A LICENSED PHARMACIST TO DISPENSE  
9 EMERGENCY CONTRACEPTION OR TO REFER A PERSON TO ANY SOURCE FOR  
10 EMERGENCY CONTRACEPTION MAY NOT BE A BASIS FOR:

11 (I) CIVIL LIABILITY TO ANOTHER PERSON; OR

12 (II) DISCIPLINARY OR OTHER RECRIMINATORY ACTION AGAINST  
13 THE LICENSED PHARMACIST.

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

16 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take  
17 effect October 1, 2005.