

Department of Legislative Services
Maryland General Assembly
2006 Session

FISCAL AND POLICY NOTE

House Bill 1459 (Delegate Quinter, *et al.*)
Health and Government Operations

**Health Occupations - Pharmacists - Return of Unfilled Prescriptions to Retail
Customers - Required**

This bill requires a pharmacist who refuses to fill a prescription presented by a retail customer to return the prescription to the customer at the time it is presented. A pharmacist who fails to do so is subject to disciplinary action by the State Board of Pharmacy. In addition to any other penalties a pharmacist may be subject to, a retail customer may bring an action against the pharmacist who refuses to fill a prescription and the pharmacist's employer to recover damages for physical injury and emotional pain and suffering caused by the violation, punitive damages, and reasonable attorney's fees and court costs.

Fiscal Summary

State Effect: Any change in State activities would not materially affect State finances.

Local Effect: None.

Small Business Effect: Meaningful for small business pharmacists and pharmacies that refuse to fill a prescription and have disciplinary action taken against them by the State Board of Pharmacy and/or subsequently have action taken against them by a customer.

Analysis

Current Law: The board may take disciplinary action against an applicant for licensure or a licensee for various specified reasons including: ● fraudulently or deceptively obtaining or attempting to obtain a license; ● fraudulently or deceptively using a license; ● providing professional services while under the influence of alcohol or using any

narcotic or controlled dangerous substance; or • dispensing any drug, device, or diagnostic for which a prescription is required without a written, oral, or electronically transmitted prescription from an authorized prescriber.

A pharmacist may refuse to dispense or fill a prescription if the decision is based on professional judgment, experience, knowledge, or available reference materials. If a pharmacist refuses to dispense or refill a prescription, the pharmacist must, to the extent practicable, notify the authorized prescriber within 72 hours of the refusal. This notification requirement does not apply if a pharmacist is unable to determine the name of the authorized prescriber.

Background: Nationwide, some pharmacists are refusing to fill prescriptions for emergency contraception and contraception prescriptions. Emergency contraception is used to prevent pregnancy within 72 hours of unprotected intercourse. According to the National Conference of State Legislatures, four states – Arkansas, Georgia, Mississippi, and South Dakota – have passed laws allowing a pharmacist to refuse to dispense emergency contraception drugs. Illinois passed an emergency rule that requires a pharmacist to dispense Food and Drug Administration-approved contraception. California pharmacists have a duty to dispense prescriptions and can only refuse to do so when their employer approves the refusal and the woman can still access her prescription in a timely manner.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts); Office of Administrative Hearings; Department of Health and Mental Hygiene; *Pharmacist Conscience Clauses: Laws and Legislation*, January 2006, National Conference of State Legislatures; Department of Legislative Services

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