

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 132

(Senator Conway)

Education, Health, and Environmental Affairs

Health and Government Operations

Health Occupations - State Board of Pharmacy - Jurisdiction Over Nonresident Pharmacies

This bill clarifies that a nonresident pharmacy must comply with specified provisions of Maryland law when dispensing prescription drugs or devices to a patient in Maryland or otherwise engaging in the practice of pharmacy in Maryland. A nonresident pharmacy must have a pharmacist on staff that is licensed by the State Board of Pharmacy and designated as the pharmacist responsible for providing pharmaceutical services to patients in the State.

Fiscal Summary

State Effect: Special fund revenues for the State Board of Pharmacy increase by as much as \$147,000 in FY 2013 from fees from additional nonresident pharmacist licenses. Future years reflect biennial renewal of licenses. Processing of additional licenses can be handled with existing budgeted resources.

(in dollars)	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
SF Revenue	\$147,000	\$0	\$110,300	\$0	\$110,300
Expenditure	0	0	0	0	0
Net Effect	\$147,000	\$0	\$110,300	\$0	\$110,300

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

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: The bill expands the board's disciplinary authority over nonresident pharmacies by specifying that nonresident pharmacies are subject to any disciplinary actions under Subtitle 4 of the Health Occupations Article and repealing the requirement that the board defer disciplinary action until certain actions are taken by the regulatory or licensing agency in the state in which the nonresident pharmacy is located. The bill clarifies that nonresident pharmacies are subject to inspection by the Secretary of Health and Mental Hygiene, the board, or the agents of either and must submit copies of the most recent inspection report from the respective regulatory or licensing agency in the state in which the pharmacy is located in order to obtain an initial or renewal pharmacy permit. A pharmacist that communicates with Maryland patients as part of a nonresident pharmacy's toll-free telephone service must refer patients in the State to the responsible pharmacist licensed in the State, as appropriate.

Current Law: A pharmacy located out of state that ships, mails, or delivers drugs or devices to Maryland residents must file for a nonresident pharmacy permit. In addition to submitting an application to the board, a nonresident pharmacy must submit a copy of the most recent inspection report conducted by the state's regulatory or licensing agency in which the pharmacy is located.

A nonresident pharmacy, among other things, must maintain a valid permit to conduct a pharmacy in compliance with the laws of the state in which it is located, maintain readily retrievable records of prescription drugs or devices dispensed to Maryland patients, and provide toll-free telephone service (during regular hours of operations but not less than six days per week and a minimum of 40 hours per week) to facilitate communication between Maryland patients and a pharmacist who has access to the patient's prescription records.

If a nonresident pharmacy operates in violation of statute, the board can suspend the pharmacy permit until compliance is met. The board may fine a nonresident pharmacy or deny, revoke, or suspend the permit of a nonresident pharmacy for specified violations of law. However, the board cannot issue a fine or take disciplinary action until a complaint is referred to the regulatory or licensing agency in the state in which the nonresident pharmacy is located and that entity fails to open an investigation within 45 days. If an investigation is conducted within that time period, the board must accept as final disposition the decision of the regulatory or licensing agency.

Background: Although current law requires all pharmacists to be licensed before practicing pharmacy in the State and all pharmacy technicians to be registered, the board does not interpret the current requirement as applying to nonresidents even if they provide services to Maryland patients. While all nonresident pharmacies must be

licensed with the board, they may (along with pharmacy benefits managers, discount medical and drug plans, and private review agents) employ pharmacists and pharmacy technicians located and licensed or registered in other states to fill prescriptions and otherwise practice pharmacy to or on behalf of Maryland patients.

According to the board, the bill is intended to ensure that nonresident pharmacies are generally subject to the same laws and requirements as Maryland pharmacies. Most significantly, the bill requires that nonresident pharmacies employ at least one pharmacist who is licensed by the board. Licensure of at least one pharmacist at each nonresident pharmacy and expansion of disciplinary authority as provided under the bill will authorize the board to investigate complaints and take disciplinary action against nonresident pharmacies and pharmacists when necessary. Currently, the board refers cases to the regulatory or licensing agency in the state in which the nonresident pharmacy is located and must rely on the actions of that entity. If no formal action is taken in response to a complaint, the board cannot access information about the regulatory or licensing agency's findings or informal actions. Furthermore, the board indicates that few other states in which nonresident pharmacies are located monitor quality assurance or take *corrective* (rather than punitive) actions against nonresident pharmacies that fail to comply with respective laws and regulations.

Other professions in Maryland also require a Maryland license for a nonresident to practice in the State including attorneys, physicians, dentists, certified public accountants, master electricians, plumbers, and real estate brokers. According to the board, eight other states require that the pharmacist in charge of a nonresident pharmacy be licensed in the state in which the pharmacist is practicing pharmacy.

Currently, 490 nonresident (mail-order) pharmacies hold Maryland pharmacy permits with at least one pharmacist employed at each location.

State Revenues: Special fund revenues for the board increase by as much as \$147,000 in fiscal 2013 from application fees from nonresident pharmacists seeking reciprocal licensure as required under the bill. This estimate is based on the following assumptions:

- there are 490 nonresident pharmacies;
- approximately 2,800 nonresident pharmacists are currently licensed by the board;
- even so, the board estimates that, on average, one additional pharmacist from each nonresident pharmacy does not currently hold a Maryland license and will seek a reciprocal license from the board in fiscal 2013; and
- the fee for an initial reciprocal pharmacist license is \$300.

As licenses and registrations are renewed biennially, special fund revenues increase by as much as \$110,250 in fiscal 2015 and again in fiscal 2017 due to receipt of the \$225 license renewal fee from the 490 pharmacists who sought initial licensure in fiscal 2013. This estimate does not account for growth or attrition in nonresident pharmacists. To the extent that the number of nonresident pharmacists and pharmacy technicians who are not yet licensed or registered in the State differs, special fund revenues increase or decrease accordingly.

Additional Comments: SB 769/HB 549 of 2011 would have required each pharmacist employed by a nonresident pharmacy, pharmacy benefits manager, third-party payor, or other entity that is “practicing pharmacy” to or on behalf of a person in Maryland to be licensed by the board and required each nonresident pharmacy to ensure that pharmacists in its employ be licensed before practicing pharmacy. The bills were heard by the Senate Education, Health, and Environmental Affairs and the House Health and Government Operations committees, respectively. Both bills were later withdrawn.

Additional Information

Prior Introductions: None.

Cross File: HB 334 (Delegates Costa and Kipke) – House Health and Government Operations Committee.

Information Source(s): Department of Health and Mental Hygiene, Department of Legislative Services

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