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FISCAL AND POLICY NOTE
Revised

Senate Bill 139

(Senator Conway)

Education, Health, and Environmental Affairs

Health and Government Operations

**Health Care Practitioners - Prescription Drug or Device Dispensing - Medical
Facilities or Clinics That Specialize in Treatment Reimbursable Through
Workers' Compensation Insurance**

This bill requires dentists, physicians, and podiatrists that treat patients at a medical facility or clinic that specializes in the treatment of medical cases reimbursable through workers' compensation insurance to obtain a dispensing permit in order to dispense a prescription drug or device.

The bill takes effect July 1, 2013.

Fiscal Summary

State Effect: Special fund revenues increase – by a potentially significant amount – for the State Board of Physicians beginning in FY 2014 due to the issuance of additional dispensing permits. Special fund expenditures increase minimally to issue the permits. A portion of the revenue is anticipated to be used to offset general fund expenditures associated with inspections of dispensing permit holders by the Division of Drug Control (DDC). Any additional expenditures related to inspections under this bill can be handled with existing resources.

Local Effect: None.

Small Business Effect: Potential meaningful impact for affected providers required to obtain a dispensing permit.

Analysis

Current Law: A licensed dentist, physician, or podiatrist may personally prepare and dispense prescription drugs or devices if he or she holds a written dispensing permit from his or her respective licensing board and meets other specified criteria. Dispensing permit requirements do not apply to the dispensing of starter dosages of prescription drugs, hospital-based clinics, or dispensing of prescription drugs by a licensed veterinarian.

Under Chapter 691 of 1986, dentists, physicians, and podiatrists who dispense in the following settings are exempt from the dispensing permit requirement: (1) a medical facility or clinic that specializes in the treatment of medical cases reimbursable through workers' compensation insurance; (2) a medical facility or clinic that is operated on a nonprofit basis; (3) a health center that operates on a campus of an institution of higher education; and (4) a public health facility, a medical facility under contract with a State or local health department, or a facility funded with public funds.

A dentist, physician, or podiatrist who dispenses prescription drugs or devices must comply with prescription drug labeling requirements, record the dispensing on a patient's chart, allow DDC to enter and inspect the practitioner's office at all reasonable hours, provide the patient with a written prescription, and maintain prescription files in a specified manner. A dentist, physician, or podiatrist who dispenses may not have a substantial financial interest in a pharmacy, direct patients to a single pharmacist or pharmacy, or receive remuneration for referring patients to a pharmacist or pharmacy.

Effective July 1, 2013, under Chapter 267 of 2012 (SB 603), a dentist, physician, or podiatrist who dispenses must also (1) comply with drug recalls and child-resistant packaging requirements; (2) maintain biennial inventories and comply with recordkeeping requirements relating to controlled dangerous substances (CDS); (3) purchase prescription drugs from a pharmacy or wholesale distributor that holds a permit issued by the Board of Pharmacy; (4) report annually to the respective board of licensure whether he or she has personally prepared and dispensed prescription drugs within the previous year; (5) complete 10 continuing education credits as a condition of permit renewal; and (6) on inspection by DDC, sign and date an acknowledgement form relating to these and other requirements.

Chapter 267 also requires DDC, effective July 1, 2013, to begin inspecting the office of a dentist, physician, or podiatrist who holds an initial dispensing permit within six months of receiving notice of the initial licensure and at least one more time within the duration of the permit. With respect to a holder of a renewal permit, DDC must inspect the office of the holder at least two times within the duration of the permit. DDC must promptly report the results of these inspections to the respective licensing boards.

Under existing regulations, a dispensing permit is valid for five years and subject to a fee of \$50 (\$75 for dentists), payable to the respective board. In addition to these requirements, a practitioner who dispenses CDS must have a permit from the U.S. Drug Enforcement Agency and register with DDC. A registration certificate to dispense CDS costs \$120 and is renewable every two years.

Background: According to the respective boards, a total of 1,515 dispensing permits are currently held in Maryland, including 1,442 physicians (State Board of Physicians), 52 dentists (State Board of Dental Examiners), and 21 podiatrists (State Board of Examiners of Podiatrists).

The bill will require providers (principally physicians) that practice in workers' compensation clinics to obtain a dispensing permit from their respective board, as is currently required of providers who dispense from their offices.

According to DDC, approximately 137 registered vocational rehabilitation companies employ practitioners to work with injured workers. However, it is unknown how many dispensing practitioners are employed by these companies.

State Fiscal Effect: Special fund revenues increase – by a potentially significant amount – beginning in fiscal 2014 for the State Board of Physicians from fee revenues from the issuance of additional dispensing permits. The current fee for a dispensing permit is \$50 and the permit is valid for five years. However, Chapter 267 requires the boards of Dental Examiners, Physicians, and Podiatric Medical Examiners to charge a fee to dispensing permit holders in an amount that will produce funds to approximate but not exceed the documented costs to DDC for inspections of permit holders. This is anticipated to result in significantly higher permit fees. The actual amount of revenue received will depend on the number of physicians currently practicing in workers' compensation clinics that dispense prescription drugs and devices and the revised permit fee amounts. Revenue from these fees is anticipated to be used to offset general fund expenditures for DDC's inspection costs, as required under Chapter 267.

Special fund expenditures for the board also increase by a minimal amount beginning in fiscal 2014 to process applications and issue permits. Processing of approximately 200 additional dispensing permits is absorbable within existing budgeted resources.

The Governor's proposed fiscal 2014 budget includes funding for three new positions to support DDC's inspection of dispensing practitioners as required under Chapter 267. Based on an estimated 200 dispensing practitioners at the 137 registered vocational rehabilitation companies, the bill will require DDC to conduct 80 additional inspections annually. DDC indicates that, with the additional personnel provided in the Governor's

proposed fiscal 2014 budget, these additional inspections can be absorbed within existing budgeted resources.

Additional Comments: Many physicians in Maryland repackage and dispense medications normally dispensed by retail pharmacies. Repackaging and dispensing of drugs by physicians increases medical costs for the workers' compensation system because physicians are not bound by fee schedules and pharmacy cost controls and inflate the average wholesale price of commonly dispensed drugs. Thus, the dispensing physician may profit from the repackaging of prescription drugs, but costs to the workers' compensation system increase as a result. According to the National Council on Compensation Insurance, prescription drug costs represent 16% of workers' compensation medical costs in Maryland. To the extent that the bill results in a reduction in the number of physicians dispensing prescription drugs due to the requirement to hold a permit, overall workers' compensation costs in Maryland could decline.

Additional Information

Prior Introductions: None.

Cross File: HB 1237 (Delegate Bromwell – (By Request - State Board of Pharmacy) – Health and Government Operations.

Information Source(s): Department of Health and Mental Hygiene, Workers' Compensation Commission, National Council on Compensation Insurance, Department of Legislative Services

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