

SENATE BILL 871

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CF HB 943

By: **Senator Jennings**

Introduced and read first time: February 3, 2020

Assigned to: Finance and Education, Health, and Environmental Affairs

A BILL ENTITLED

1 AN ACT concerning

2 **Mail Order and Specialty Drugs – Physician Dispensing**

3 FOR the purpose of providing that certain provisions of law do not prohibit a physician
4 from personally dispensing to a patient by mail order certain prescription drugs and
5 devices; prohibiting certain entities, policies, and contracts from imposing certain
6 cost-sharing requirements and conditions on an insured or a certificate holder who
7 uses certain services; requiring certain entities to allow certain insureds, enrollees,
8 and beneficiaries to obtain a covered drug from a certain physician; prohibiting a
9 pharmacy benefits manager from reimbursing a certain physician less than a certain
10 amount; defining certain terms; providing for the application of this Act; providing
11 for a delayed effective date; and generally relating to physician dispensing of
12 prescription drugs.

13 BY repealing and reenacting, with amendments,
14 Article – Health Occupations
15 Section 12–102
16 Annotated Code of Maryland
17 (2014 Replacement Volume and 2019 Supplement)

18 BY repealing and reenacting, with amendments,
19 Article – Insurance
20 Section 15–805, 15–847(a) and (d), 15–1611.1, and 15–1612
21 Annotated Code of Maryland
22 (2017 Replacement Volume and 2019 Supplement)

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

25 **Article – Health Occupations**

26 12–102.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (a) (1) In this section the following terms have the meanings indicated.

2 (2) "In the public interest" means the dispensing of drugs or devices by a
3 licensed dentist, physician, or podiatrist to a patient when a pharmacy is not conveniently
4 available to the patient.

5 (3) "Personally preparing and dispensing" means that the licensed dentist,
6 physician, or podiatrist:

7 (i) Is physically present on the premises where the prescription is
8 filled; and

9 (ii) Performs a final check of the prescription before it is provided to
10 the patient.

11 (b) This title does not limit the right of an individual to practice a health
12 occupation that the individual is authorized to practice under this article.

13 (c) (1) This subsection does not apply to a licensed dentist who obtains a
14 permit from the State Board of Dental Examiners under subsection (h) of this section.

15 (2) This title does not prohibit:

16 (i) A licensed veterinarian from:

17 1. Personally preparing and dispensing the veterinarian's
18 prescriptions; or

19 2. Dispensing, in accordance with § 2-313(c) of the
20 Agriculture Article, compounded nonsterile preparations or compounded sterile
21 preparations provided by a pharmacy;

22 (ii) A licensed dentist, physician, or podiatrist from personally
23 preparing and dispensing the dentist's, physician's, or podiatrist's prescriptions when:

24 1. The dentist, physician, or podiatrist:

25 A. Has applied to the board of licensure in this State which
26 licensed the dentist, physician, or podiatrist;

27 B. Has demonstrated to the satisfaction of that board that the
28 dispensing of prescription drugs or devices by the dentist, physician, or podiatrist is in the
29 public interest;

30 C. Has received a written permit from that board to dispense
31 prescription drugs or devices except that a written permit is not required in order to

1 dispense starter dosages or samples without charge; and

2 D. Posts a sign conspicuously positioned and readable
3 regarding the process for resolving incorrectly filled prescriptions or includes written
4 information regarding the process with each prescription dispensed;

5 2. The person for whom the drugs or devices are prescribed
6 is a patient of the prescribing dentist, physician, or podiatrist;

7 3. The dentist, physician, or podiatrist does not have a
8 substantial financial interest in a pharmacy; and

9 4. The dentist, physician, or podiatrist:

10 A. Complies with the dispensing and labeling requirements
11 of this title;

12 B. Records the dispensing of the prescription drug or device
13 on the patient's chart;

14 C. Allows the Office of Controlled Substances Administration
15 to enter and inspect the dentist's, physician's, or podiatrist's office at all reasonable hours
16 and in accordance with § 12-102.1 of this subtitle;

17 D. On inspection by the Office of Controlled Substances
18 Administration, signs and dates an acknowledgment form provided by the Office of
19 Controlled Substances Administration relating to the requirements of this section;

20 E. Except for starter dosages or samples without charge,
21 provides the patient with a written prescription, maintains prescription files in accordance
22 with § 12-403(c)(13) of this title, and maintains a separate file for Schedule II prescriptions;

23 F. Does not direct patients to a single pharmacist or
24 pharmacy in accordance with § 12-403(c)(8) of this title;

25 G. Does not receive remuneration for referring patients to a
26 pharmacist or pharmacy;

27 H. Complies with the child resistant packaging requirements
28 regarding prescription drugs under Title 22, Subtitle 3 of the Health – General Article;

29 I. Complies with drug recalls;

30 J. Maintains biennial inventories and complies with any
31 other federal and State record-keeping requirements relating to controlled dangerous
32 substances;

1 K. Purchases prescription drugs from a pharmacy or
2 wholesale distributor who holds a permit issued by the Board of Pharmacy, as verified by
3 the Board of Pharmacy;

4 L. Annually reports to the respective board of licensure
5 whether the dentist, physician, or podiatrist has personally prepared and dispensed
6 prescription drugs within the previous year; and

7 M. Completes ten continuing education credits over a 5-year
8 period relating to the preparing and dispensing of prescription drugs, offered by the
9 Accreditation Council for Pharmacy Education (ACPE) or as approved by the Secretary, in
10 consultation with each respective board of licensure, as a condition of permit renewal;

11 (iii) A licensed physician from dispensing a topical medication
12 without obtaining the permit required under item (ii)1C of this paragraph or completing
13 the continuing education required under item (ii)4M of this paragraph when the physician:

14 1. Otherwise complies with item (ii) of this paragraph; and

15 2. Has obtained a special written permit under § 14–509 of
16 this article;

17 (iv) A licensed physician who complies with the requirements of item
18 (ii) of this paragraph from personally preparing and dispensing a prescription written by:

19 1. A physician assistant in accordance with a delegation
20 agreement that complies with Title 15, Subtitle 3 of this article; or

21 2. A nurse practitioner who is authorized to practice under
22 Title 8, Subtitle 3 of this article and is working with the physician in the same office setting;
23 or

24 (v) A hospital-based clinic from dispensing prescriptions to its
25 patients.

26 (d) This title does not prohibit:

27 (1) A licensed veterinarian from personally dispensing a drug or device
28 sample to a patient of the veterinarian; or

29 (2) A licensed dentist, licensed physician, or licensed podiatrist from
30 personally dispensing a drug or device sample to a patient of the licensed dentist, licensed
31 physician, or licensed podiatrist if:

32 (i) The sample complies with the labeling requirements of § 12–505
33 of this title;

1 (ii) No charge is made for the sample; and

2 (iii) The authorized prescriber enters an appropriate record in the
3 patient's chart.

4 (e) (1) This title does not prohibit a dentist, physician, or podiatrist from
5 administering a prescription drug or device in the course of treating a patient.

6 (2) For the purposes of paragraph (1) of this subsection, "administering"
7 means the direct introduction of a single dosage of a drug or device at a given time, whether
8 by injection or other means, and whether in liquid, tablet, capsule, or other form.

9 (f) (1) This title does not prohibit a dentist, physician, or podiatrist from
10 personally dispensing a starter dosage of a prescription drug or device to a patient of the
11 dentist, physician, or podiatrist, provided that:

12 (i) The starter dosage complies with the labeling requirements of §
13 12-505 of this title;

14 (ii) No charge is made for the starter dosage; and

15 (iii) The dentist, physician, or podiatrist enters an appropriate record
16 on the patient's chart.

17 (2) For the purposes of paragraph (1) of this subsection, "starter dosage"
18 means an amount of drug or device sufficient to begin therapy:

19 (i) Of short duration of 72 hours or less; or

20 (ii) Prior to obtaining a larger quantity of the drug or device to
21 complete the therapy.

22 (g) This title does not prohibit a dentist, physician, or podiatrist from dispensing
23 a prescription drug or device in the course of treating a patient:

24 (1) At a medical facility or clinic that is operated on a nonprofit basis;

25 (2) At a health center that operates on a campus of an institution of higher
26 education; or

27 (3) At a public health facility, a medical facility under contract with a State
28 or local health department, or a facility funded with public funds.

29 (h) This title does not prohibit a licensed dentist who obtains a permit from the
30 State Board of Dental Examiners that allows the licensed dentist to dispense only
31 prescription strength home fluoride products, dentin/enamel remineralizing products, and
32 antimicrobial rinse from dispensing the product or rinse when:

- 1 (1) The product or rinse is dispensed to a patient of the licensed dentist;
- 2 (2) The licensed dentist enters an appropriate record in the patient's chart
3 that the product or rinse was dispensed to the patient; and
- 4 (3) The licensed dentist affixes a label on the product or rinse container
5 that includes:
- 6 (i) The name of the patient; and
- 7 (ii) Unless already printed on the container:
- 8 1. The expiration date of the product or rinse; and
- 9 2. The instructions for using the product or rinse.
- 10 (i) This title does not apply to a person who only dispenses:
- 11 (1) Prescription devices that do not contain a prescription drug;
- 12 (2) Prescription devices within which the only prescription drug is medical
13 oxygen;
- 14 (3) Durable medical equipment, as defined by the Centers for Medicare and
15 Medicaid Services; or
- 16 (4) Prosthetics, orthotics, and related supplies.
- 17 (j) This title does not prohibit a licensed dentist from dispensing a full course of
18 antibiotics to a patient for infection control if:
- 19 (1) The patient is receiving pro bono dental care;
- 20 (2) There is no charge for the antibiotics;
- 21 (3) The licensed dentist enters an appropriate record of the treatment in
22 the patient's chart; and
- 23 (4) The licensed dentist affixes a label on the antibiotic container that
24 includes:
- 25 (i) The name of the patient; and
- 26 (ii) Unless already printed on the container:
- 27 1. The expiration date of the antibiotic; and

1 2. The instructions for taking the antibiotic.

2 (k) This title does not limit the right of a general merchant to sell:

3 (1) Any nonprescription drug or device;

4 (2) Any commonly used household or domestic remedy; or

5 (3) Any farm remedy or ingredient for a spraying solution, in bulk or
6 otherwise.

7 **(L) THIS TITLE DOES NOT PROHIBIT A PHYSICIAN FROM PERSONALLY**
8 **DISPENSING TO A PATIENT BY MAIL ORDER:**

9 **(1) A STARTER DOSAGE OF A PRESCRIPTION DRUG OR DEVICE; OR**

10 **(2) AN INITIAL OR REFILL PRESCRIPTION OF A SPECIALTY DRUG.**

11 **[(1)] (M)** The Board of Pharmacy, the Board of Dental Examiners, the Board of
12 Physicians, and the Board of Podiatric Medical Examiners annually shall report to the
13 Office of Controlled Substances Administration:

14 (1) The names and addresses of its licensees who are authorized to
15 personally prepare and dispense prescription drugs; and

16 (2) The names and addresses of its licensees who have reported, in
17 accordance with subsection (c)(2)(ii)4L of this section, that they have personally prepared
18 and dispensed prescription drugs within the previous year.

19 **[(m)] (N)** A dentist, physician, or podiatrist who fails to comply with the
20 provisions of this section governing the dispensing of prescription drugs or devices shall:

21 (1) Have the dispensing permit revoked; and

22 (2) Be subject to disciplinary actions by the appropriate licensing board.

23 Article – Insurance

24 15–805.

25 (a) (1) In this section the following words have the meanings indicated.

26 (2) “Authorized prescriber” means a licensed dentist, licensed physician, or
27 licensed podiatrist who is authorized under the Health Occupations Article to prescribe a
28 pharmaceutical product.

1 **(3) “DISPENSING PHYSICIAN” MEANS A LICENSED PHYSICIAN IN THE**
2 **STATE WHO HOLDS A VALID DISPENSING PERMIT UNDER TITLE 12, SUBTITLE 1 OF**
3 **THE HEALTH OCCUPATIONS ARTICLE.**

4 **[(3)] (4)** “Pharmaceutical product” means a drug or medicine that may be
5 prescribed by an authorized prescriber.

6 (b) This section does not apply to a policy or contract that is issued to an employer
7 under a collective bargaining agreement.

8 (c) (1) This subsection applies to each policy or contract that is issued or
9 delivered in the State to an employer or individual by an insurer or nonprofit health service
10 plan and that provides group or individual hospital, medical, or surgical benefits.

11 (2) A policy or contract subject to this subsection that provides
12 reimbursement for a pharmaceutical product prescribed by an authorized prescriber may
13 not establish the amount of reimbursement to the insured or the insured’s beneficiary,
14 including copayments and deductibles, based on the identity, practicing specialty, or
15 occupation of the authorized prescriber.

16 (d) (1) This subsection applies to each individual or group policy or contract
17 that is issued or delivered in the State to an employer or individual by an insurer or
18 nonprofit health service plan and that provides benefits for pharmaceutical products.

19 (2) A policy or contract subject to this subsection may not impose a
20 copayment, deductible, or other condition on an insured or certificate holder who uses the
21 services of a community pharmacy that is not imposed when the insured or certificate
22 holder uses the services of a mail order pharmacy, if the benefits are provided under the
23 same program, policy, or contract.

24 **(3) A POLICY OR CONTRACT SUBJECT TO THIS SUBSECTION MAY NOT**
25 **IMPOSE A COPAYMENT, A COINSURANCE REQUIREMENT, A DEDUCTIBLE, OR ANY**
26 **OTHER CONDITION ON AN INSURED OR A CERTIFICATE HOLDER WHO USES THE**
27 **SERVICES OF A DISPENSING PHYSICIAN WHO MAILLS OR DELIVERS A SPECIALTY**
28 **DRUG TO THE BENEFICIARY THAT IS NOT IMPOSED WHEN THE BENEFICIARY USES**
29 **THE SERVICES OF A MAIL ORDER PHARMACY.**

30 15–847.

31 (a) (1) In this section the following words have the meanings indicated.

32 (2) (i) “Complex or chronic medical condition” means a physical,
33 behavioral, or developmental condition that:

34 1. may have no known cure;

1 (iv) 1. requires a difficult or unusual process of delivery to the
2 patient in the preparation, handling, storage, inventory, or distribution of the drug; or

3 2. requires enhanced patient education, management, or
4 support, beyond those required for traditional dispensing, before or after administration of
5 the drug.

6 (d) (1) Subject to § 15–805 of this subtitle [and], notwithstanding § 15–806 of
7 this subtitle, **AND EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION,**
8 nothing in this article or regulations adopted under this article precludes an entity subject
9 to this section from requiring a covered specialty drug to be obtained through:

10 [(1)] (I) a designated pharmacy or other source authorized under the
11 Health Occupations Article to dispense or administer prescription drugs; or

12 [(2)] (II) a pharmacy participating in the entity’s provider network, if the
13 entity determines that the pharmacy:

14 [(i)] 1. meets the entity’s performance standards; and

15 [(ii)] 2. accepts the entity’s network reimbursement rates.

16 (2) **AN ENTITY SUBJECT TO THIS SECTION SHALL ALLOW AN INSURED**
17 **OR ENROLLEE TO OBTAIN A COVERED SPECIALTY DRUG FROM A DISPENSING**
18 **PHYSICIAN.**

19 15–1611.1.

20 (A) **IN THIS SECTION, “DISPENSING PHYSICIAN” MEANS A LICENSED**
21 **PHYSICIAN IN THE STATE WHO HOLDS A VALID DISPENSING PERMIT UNDER TITLE**
22 **12, SUBTITLE 1 OF THE HEALTH OCCUPATIONS ARTICLE.**

23 [(a)] (B) Except as provided in subsection [(b)] (C) of this section, a pharmacy
24 benefits manager may not require that a beneficiary use a specific pharmacy or entity to
25 fill a prescription if:

26 (1) the pharmacy benefits manager or a corporate affiliate of the pharmacy
27 benefits manager has an ownership interest in the pharmacy or entity; or

28 (2) the pharmacy or entity has an ownership interest in the pharmacy
29 benefits manager or a corporate affiliate of the pharmacy benefits manager.

30 [(b)] (C) (1) **[A] EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS**
31 **SUBSECTION, A pharmacy benefits manager may require a beneficiary to use a specific**
32 **pharmacy or entity for a specialty drug as defined in § 15–847 of this title.**

1 **(2) A PHARMACY BENEFITS MANAGER SHALL ALLOW A BENEFICIARY**
2 **TO OBTAIN A SPECIALTY DRUG FROM A DISPENSING PHYSICIAN.**

3 **(D) A PHARMACY BENEFITS MANAGER MAY NOT IMPOSE A COPAYMENT, A**
4 **COINSURANCE REQUIREMENT, A DEDUCTIBLE, OR ANY OTHER CONDITION ON A**
5 **BENEFICIARY WHO USES THE SERVICES OF A DISPENSING PHYSICIAN WHO MAILS OR**
6 **DELIVERS A SPECIALTY DRUG TO THE BENEFICIARY THAT IS NOT IMPOSED WHEN**
7 **THE BENEFICIARY USES THE SERVICES OF A MAIL ORDER PHARMACY.**

8 15–1612.

9 **(A) IN THIS SECTION, “DISPENSING PHYSICIAN” MEANS A LICENSED**
10 **PHYSICIAN IN THE STATE WHO HOLDS A VALID DISPENSING PERMIT UNDER TITLE**
11 **12, SUBTITLE 1 OF THE HEALTH OCCUPATIONS ARTICLE.**

12 **[(a)] (B) (1) [This] EXCEPT AS PROVIDED IN SUBSECTION (C) OF THIS**
13 **SECTION, THIS section does not apply to reimbursement:**

14 **[(1)] (I)** for specialty drugs;

15 **[(2)] (II)** for mail order drugs; or

16 **[(3)] (III)** to a chain pharmacy with more than 15 stores or a
17 pharmacist who is an employee of the chain pharmacy.

18 **[(b)] (2)** A pharmacy benefits manager may not reimburse a pharmacy or
19 pharmacist for a pharmaceutical product or pharmacist service in an amount less than the
20 amount that the pharmacy benefits manager reimburses itself or an affiliate for providing
21 the same product or service.

22 **(C) A PHARMACY BENEFITS MANAGER MAY NOT REIMBURSE A DISPENSING**
23 **PHYSICIAN WHO MAILS OR DELIVERS A SPECIALTY DRUG IN AN AMOUNT LESS THAN**
24 **THE AMOUNT THAT THE PHARMACY BENEFITS MANAGER REIMBURSES ITSELF OR AN**
25 **AFFILIATE FOR PROVIDING THE SAME PRODUCT OR SERVICE.**

26 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall apply to all
27 policies, contracts, and health benefit plans issued, delivered, or renewed in the State on or
28 after January 1, 2021.

29 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
30 January 1, 2021.