

Department of Legislative Services  
 Maryland General Assembly  
 2020 Session

FISCAL AND POLICY NOTE  
 First Reader

House Bill 316 (Delegate Hill, *et al.*)  
 Health and Government Operations

Public Health - Schedule II Controlled Dangerous Substances - Partial Filling of Prescriptions

This bill permits an authorized provider permitted to dispense a controlled dangerous substance (CDS) to fill a prescription for a Schedule II CDS in a quantity less than the prescribed amount on request of the patient. The bill specifies procedures for filling the remaining portion of the prescription. A carrier, a Medicaid managed care organization (MCO), and the State Employee and Retiree Health and Welfare Benefits Program must treat a prescription filled in parts as if the prescription had been filled at one time for purposes of charging or collecting any cost-sharing payment for the prescription.

Fiscal Summary

**State Effect:** Medicaid expenditures increase by \$5.0 million (52% federal funds, 48% general funds) in FY 2021 to upgrade Medicaid pharmacy systems and provide additional dispensing fees. Federal fund revenues increase accordingly. Minimal special fund revenue increase for the Maryland Insurance Administration (MIA) in FY 2021 from the \$125 rate and form filing fee. MIA can likely review additional filings with existing resources. **This bill increases the cost of an entitlement program beginning in FY 2021.**

(in dollars)	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025
FF Revenue	\$2,646,000	\$28,000	\$28,000	\$28,000	\$28,000
GF Expenditure	\$2,395,300	\$27,100	\$27,100	\$27,100	\$27,100
SF Expenditure	-	\$0	\$0	\$0	\$0
FF Expenditure	\$2,646,000	\$28,000	\$28,000	\$28,000	\$28,000
Net Effect	(\$2,395,300)	(\$27,100)	(\$27,100)	(\$27,100)	(\$27,100)

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

**Local Effect:** None.

**Small Business Effect:** Meaningful.

## Analysis

**Bill Summary:** The remaining portion of a prescription may be filled within 60 days after the prescription was partially filled and may be filled by either the same authorized provider or another authorized provider that receives a transferred prescription if the transferring authorized provider has noted how much of the prescription was originally dispensed.

An authorized provider who partially fills a prescription must (1) promptly write out and file a record of the partially filled prescription indicating that the prescription was partially filled, the quantity dispensed, and, if the prescription was transferred, the name and business address of the authorized provider to or from which the prescription was transferred and (2) on request, make the record accessible to the prescribing authorized provider or the pharmacist dispensing the CDS.

The Secretary of Budget and Management must adopt regulations to require that, under the State Employee and Retiree Health and Welfare Benefits Program, a prescription filled in parts be treated as if the prescription had been filled at one time for the purposes of charging or collecting any cost-sharing payment for the prescription.

### **Current Law:**

#### *Federal Law*

The federal Comprehensive Addiction and Recovery Act, signed in 2016, permits a pharmacist to partially fill a prescription for a Schedule II CDS for ambulatory patients under the following circumstances: (1) it is not prohibited by state law; (2) the prescription is written and filled in accordance with federal and state law; (3) the partial fill is requested by the patient or the prescriber; and (4) the total quantity dispensed in all partial fillings does not exceed the total quantity prescribed.

#### *Maryland Law*

Under the Maryland Controlled Dangerous Substances Act, there are five CDS schedules. Schedule II substances have (1) high potential for abuse; (2) currently accepted medical use in the United States or currently accepted medical use with severe restrictions; and (3) evidence that abuse of the substance may lead to severe psychological or physical dependence. Examples of Schedule II CDS include codeine, hydrocodone, methadone, morphine, and oxycodone.

Under Maryland regulations (COMAR 10.19.03.08), the partial filling of a prescription for a Schedule II CDS is only permissible if a pharmacist is unable to supply the full quantity called for and for a terminally ill patient or a patient in a long-term care facility (LTCF).

If a pharmacist is unable to supply the full quantity called for in a written or emergency oral prescription, the pharmacist may provide a partial filling if the pharmacist makes a notation of the quantity supplied on the face of the written prescription (or written record of the emergency oral prescription). The remaining portion may be filled within 72 hours of the first partial filling; however, if the remaining portion is not or cannot be filled within the 72-hour period, the pharmacist must notify the prescriber. No further quantity may be supplied beyond 72 hours without a new prescription.

A pharmacist may fill a Schedule II CDS prescription in partial quantities to include individual dosage units for a patient in an LTCF or for a patient with a documented terminal illness. The pharmacist must record on the prescription whether the patient is a “terminally ill” or “LTCF” patient. For each partial filling, the dispensing pharmacist must record on the back of the prescription or on another appropriate record the (1) date of the partial filling; (2) quantity dispensed; (3) remaining quantity authorized to be dispensed; and (4) identification of the dispensing pharmacist. Before any subsequent partial filling, the pharmacist must determine if the additional partial filling is necessary. The total quantity dispensed in all partial fillings may not exceed the total quantity prescribed.

Medicaid regulations (COMAR 10.09.03.05) specify that providers may partially fill a prescription for Schedule II CDS, *but the remaining portion of the prescription may not be later filled.*

**Background:** In 2018, California and Massachusetts enacted laws to allow partial dispensing of Schedule II CDS on request of the patient as part of the states’ efforts to reduce the availability of unused and unwanted CDS.

**State Fiscal Effect:** The Maryland Department of Health (MDH) advises that, in fiscal 2019, Medicaid paid for 872,647 Schedule II CDS prescriptions. Of these drugs, 485,533 (56%) were paid for on a fee-for-service (FFS) basis and 387,114 (44%) were paid for by an MCO. The FFS dispensing fee is \$10.49 per prescription, while the average MCO dispensing fee is \$1.00 per prescription. MDH advises that the department’s FFS pharmacy vendor and the nine MCO pharmacy vendors do not currently have the capacity to manage prescriptions partially filled at multiple pharmacies.

Medicaid expenditures increase by an estimated \$5,041,327 (52% federal funds, 48% general funds) in fiscal 2021, which reflects the bill’s October 1, 2020 effective date. This estimate reflects (1) at least \$5.0 million in one-time-only costs to upgrade the Medicaid FFS pharmacy vendor and each of the nine Medicaid MCO pharmacy vendors

to accommodate management of prescriptions that may be partially filled across multiple providers or pharmacies and (2) \$40,709 for additional dispensing fees for Schedule II CDS prescriptions dispensed in two fills. The information and assumptions used in calculating the estimate are stated below:

- The Medicaid FFS pharmacy vendor system must be updated at a one-time cost of at least \$500,000 (75% federal funds, 25% general funds) in fiscal 2021 only.
- Each of the nine MCO pharmacy vendor systems must be updated at a one-time cost of at least \$500,000 each or a total of at least \$4,500,000 (50% general funds, 50% federal funds) in fiscal 2021 only.
- 1% of Medicaid Schedule II CDS prescriptions prescribed in fiscal 2021 (beginning October 1, 2020) will be partially filled (6,545).
- All of these prescriptions will have the remaining portion of the prescription filled, requiring Medicaid payment of a second dispensing fee.
- 56% of these prescriptions (3,665) will be paid the FFS dispensing fee of \$10.49, costing a total of \$38,447 (50% general funds, 50% federal funds) in fiscal 2021.
- The remaining 44% of these prescriptions (2,880) will be paid the average MCO dispensing fee of \$1.00, costing a total of \$2,880 (63% federal funds, 37% general funds) in fiscal 2021.
- The number of Medicaid prescriptions for Schedule II drugs and Medicaid dispensing fees remain constant in future years.

Future years reflect the ongoing cost of additional dispensing fees at approximately \$55,099 annually (51% federal funds, 49% general funds).

The Department of Budget and Management advises that there is no fiscal or operational impact on the State Employee and Retiree Health and Welfare Benefits Program.

**Small Business Effect:** Small business pharmacies benefit from receipt of additional dispensing fees to the extent partially filled prescriptions have the remaining portion of the prescription filled.

## **Additional Information**

**Prior Introductions:** None.

**Designated Cross File:** None.

**Information Source(s):** U.S. Department of Justice Drug Enforcement Administration; Department of Budget and Management; Maryland Department of Health; Maryland Health Benefit Exchange; Maryland Insurance Administration; Department of Legislative Services

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