SENATE BILL 159

By: Senators Kelley, Beidle, Benson, Carter, Feldman, Guzzone, Sydnor, and Waldstreicher

Requested: September 16, 2021
Introduced and read first time: January 12, 2022
Assigned to: Education, Health, and Environmental Affairs

Committee Report: Favorable with amendments
Senate action: Adopted
Read second time: February 27, 2022

CHAPTER _____

AN ACT concerning

Health Occupations – Authorized Prescribers – Reporting of Financial
Gratuities or Incentives

FOR the purpose of requiring each authorized prescriber who receives a financial gratuity or incentive from a pharmaceutical distributor or manufacturer to file a disclosure form with a certain health occupations board within a certain period of time to be used for a certain purpose; establishing requirements related to the disclosure of financial gratuities or incentives by authorized prescribers and the review and use of the disclosures by health occupations boards that regulate the authorized prescribers; requiring the State Board of Physicians to post a link to the open payments website each physician’s profile on its website and to take certain other actions related to the use of data on the open payments website; and generally relating to disclosures by authorized prescribers filed with health occupations boards.

BY adding to
Article – Health Occupations
Section 1–227 and 14–411.2
Annotated Code of Maryland
(2021 Replacement Volume)

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.
Underlining indicates amendments to bill.
Strike out indicates matter stricken from the bill by amendment or deleted from the law by amendment.
1 Article – Health Occupations

2 1–227.

3 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

4 (2) (I) “AUTHORIZED PRESCRIBER” MEANS ANY LICENSED DENTIST, LICENSED PHYSICIAN, LICENSED PODIATRIST, ADVANCED PRACTICE NURSE WITH PRESCRIPTIVE AUTHORITY UNDER § 8–508 OF THIS ARTICLE, OR ANY OTHER INDIVIDUAL AUTHORIZED BY LAW TO PRESCRIBE PRESCRIPTION OR NONPRESCRIPTION DRUGS OR DEVICES.

5 (II) “AUTHORIZED PRESCRIBER” DOES NOT INCLUDE A LICENSED PHYSICIAN.

6 (3) (I) “FINANCIAL GRATUITY OR INCENTIVE” MEANS THE PROVISION OR PAYMENT OF ANYTHING OF VALUE IN EXCHANGE FOR THE PROMOTION OR PURCHASE OF PRODUCTS OR SERVICES.

7 (IV) (3) (I) “FINANCIAL GRATUITY OR INCENTIVE” INCLUDES:

8 1. CASH PAYMENT;

9 2. A SPEAKING AGREEMENT;

10 3. A CONSULTING AGREEMENT;

11 4. A PHYSICIAN OWNERSHIP AGREEMENT;

12 5. AN AGREEMENT FOR STOCK OPTIONS;

13 6. AN AGREEMENT FOR A RESEARCH GRANT OR CLINICAL TRIAL;

14 7. A ROYALTY AGREEMENT;

15 8. AN AGREEMENT FOR A FELLOWSHIP;

16 9. AN AGREEMENT FOR CONFERENCE ATTENDANCE;

17 AND

18 10. AN EXCLUSIVE PRODUCT LOYALTY AGREEMENT.
(II) "FINANCIAL GRATUITY OR INCENTIVE" DOES NOT INCLUDE PAYMENTS FOR FOOD.

(4) "PHARMACEUTICAL MANUFACTURER OR DISTRIBUTOR" INCLUDES A REPRESENTATIVE OF A COMPANY THAT Sells MEDICAL EQUIPMENT.

(B) EACH AUTHORIZED PRESCRIBER WHO RECEIVES A FINANCIAL GRATUITY OR INCENTIVE FROM A PHARMACEUTICAL DISTRIBUTOR OR MANUFACTURER SHALL FILE WITH THE HEALTH OCCUPATIONS BOARD THAT LICENSES THE AUTHORIZED PRESCRIBER A FINANCIAL DISCLOSURE FORM REQUIRED BY THE HEALTH OCCUPATIONS BOARD WITHIN 30 DAYS AFTER THE DATE THE FINANCIAL GRATUITY OR INCENTIVE IS RECEIVED BY THE AUTHORIZED PRESCRIBER.

(C) THE INFORMATION DISCLOSED BY THE AUTHORIZED PRESCRIBER ON THE FORM UNDER SUBSECTION (B) OF THIS SECTION:

(1) MAY BE USED BY A HEALTH OCCUPATIONS BOARD ONLY TO AUDIT, INVESTIGATE, OR TAKE DISCIPLINARY ACTION AGAINST THE AUTHORIZED PRESCRIBER; AND

(2) MAY NOT BE DISCLOSED TO THE PUBLIC.

(D) IF AN AUTHORIZED PRESCRIBER WILFULLY FAILS TO FILE A FINANCIAL DISCLOSURE FORM AS REQUIRED BY SUBSECTION (B) OF THIS SECTION, THE HEALTH OCCUPATIONS BOARD MAY IMPOSE A FINE NOT TO EXCEED $1,000 PER VIOLATION.

(B) EACH AUTHORIZED PRESCRIBER WHO RECEIVES A FINANCIAL GRATUITY OR INCENTIVE FROM A PHARMACEUTICAL DISTRIBUTOR OR MANUFACTURER SHALL SUBMIT TO THE HEALTH OCCUPATIONS BOARD THAT LICENSES THE AUTHORIZED PRESCRIBER A FINANCIAL DISCLOSURE DOCUMENT IN THE FORM DETERMINED BY THE HEALTH OCCUPATIONS BOARD AND AS REQUIRED BY THE HEALTH OCCUPATIONS BOARD WITHIN 30 DAYS AFTER THE DATE THE FINANCIAL GRATUITY OR INCENTIVE IS RECEIVED BY THE AUTHORIZED PRESCRIBER.

(C) EACH HEALTH OCCUPATIONS BOARD THAT REGULATES AN AUTHORIZED PRESCRIBER WHO IS REQUIRED TO SUBMIT A FINANCIAL DISCLOSURE DOCUMENT UNDER SUBSECTION (B) OF THIS SECTION SHALL REVIEW EACH YEAR:
(1) All financial gratuities and incentives that an authorized prescriber receives that exceed a cumulative amount of $5,000 per year; and

(2) Subject to subsection (d) of this section, the prescribing history and patterns of the authorized prescriber regarding all patients of the authorized prescriber and determine whether to take action against the authorized prescriber.

(b) The health occupation boards shall consider the specialty areas of the prescribers while reviewing the prescribing history and patterns of an authorized prescriber under this section.

(e) A health occupations board shall adopt regulations to implement this section.

14–411.2.

(a) In this section, “Open Payments website” means the website maintained by the U.S. Centers for Medicare and Medicaid Services on which information about financial relationships between health care providers and drug and device companies is published and that enables a user to search for health care providers.

(b) The board shall:

(1) Post a link to the Open Payments website on each licensee’s individual profile on its website; and

(2) Develop a nonpublic database of licensees with information collected on the Open Payments website.

(c) The board shall use the database developed under subsection (b)(2) of this section to review each year:

(1) All financial gratuities and incentives that a licensee receives that exceed a cumulative amount of $5,000 per year; and

(2) Subject to subsection (d) of this section, the prescribing history and patterns of the licensee regarding all patients of the licensee and determine whether to take action against the licensee.
(D) **THE BOARD SHALL CONSIDER THE SPECIALTY AREAS OF THE LICENSEE** WHILE REVIEWING THE PRESCRIBING HISTORY AND PATTERNS OF A LICENSEE UNDER THIS SECTION.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed to apply only prospectively and may not be applied or interpreted to have any effect on or application to any financial gratuity or incentive received before the effective date of this Act.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2022.

Approved:

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Governor.

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President of the Senate.

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Speaker of the House of Delegates.