



Larry Hogan, Governor · Boyd K. Rutherford, Lt. Governor · Robert R. Neall, Secretary

February 20, 2020

The Honorable Delores G. Kelley, Chair
 Senate Finance Committee
 3 East, Miller Senate Office Building
 Annapolis, Maryland 21401

RE: Letter of Support with Amendments – SB 166 - Drugs and Devices - Electronic Prescriptions - Controlled Dangerous Substances

Dear Chair Kelley and Committee Members:

The Maryland Department of Health (MDH) submits this letter of support with amendments for Senate Bill 166 (SB 166) - Drugs and Devices - Electronic Prescriptions - Controlled Dangerous Substances. This bill is very similar to MDH’s departmental bill, House Bill 692 - Drugs and Devices - Electronic Prescriptions - Controlled Dangerous Substances. MDH thanks Sen. Kelley for being the Senate sponsor on this important topic and Del. Barron for sponsoring HB 512.

MDH respectfully requests that the Committee adopt the attached amendments, which are drafted to the latest version to be worked on in the House Health and Government Operations Committee. MDH has and continues to work closely with Delegate Barron, HB 512’s sponsor, and stakeholders to rework the electronic prescriptions bill from last session and come to a consensus. Below is a chart outlining the differences between HB 512, HB 692, and SB 166. We believe that the House will adopt a version of HB692 in HB512 with additional technical amendments.

Differences in the Bills	SB166	HB512	HB692
CR 5-101	Not incorporated	Defines “electronic prescribing”	Defines “electronic prescribing” with more detail.
HG 21-220(E)	Health Occupations “ shall ” take action	Health Occupations “ may ” take action	Health Occupations “ may ” take action
HG 21-220(b)(1)	Not incorporated	Adds language “or made through an electronic prescription”	Not incorporated
HG 21-220(c)	Not incorporated	Not incorporated	Adds incarcerated individuals
HG 21-220	Not incorporated	Defines “electronic prescribing”	Defines “electronic prescribing”
Work Group	Requires a work group	Not incorporated	Not incorporated

If you have additional questions, please contact the Director of Governmental Affairs, Webster Ye, at (410) 260-3190 or webster.ye@maryland.gov.

Sincerely,

A handwritten signature in blue ink that reads "Robert R. Neall". The signature is stylized with a large initial "R" and a long horizontal stroke at the end.

Robert R. Neall
Secretary

MDH Proposed Amendments to Senate Bill 166

Amendment 1:

On page 2, in line 2, after “Section”, insert “5-101,”.

On page 2, after line 12, insert
“5-101.”

a. In this title the following words have the meanings indicated.

(P-1) “ELECTRONIC PRESCRIPTION” MEANS A PRESCRIPTION THAT:

- 1. IS GENERATED ON AN ELECTRONIC APPLICATION AND TRANSMITTED AS AN ELECTRONIC DATA FILE; AND**
- 2. IF THE PRESCRIPTION IS FOR A CONTROLLED DANGEROUS SUBSTANCE, COMPLIES WITH THE REQUIREMENTS OF 21 C.F.R. PART 1306, AS AMENDED FROM TIME TO TIME.”**

RATIONALE: Conforms SB 166 to HB 692 and HB 512. Per discussion with stakeholders after the House bill hearing and at the suggestion of Delegate Barron, to allow for less recodification if federal regulations change.

Amendment 2:

On page 5, in line 4, after “ELECTRONIC PRESCRIPTION,” insert “AS DEFINED IN § 5-101 OF THE CRIMINAL LAW ARTICLE.”

RATIONALE: Conforms SB 166 to HB 692 and HB 512.

Amendment 3:

On page 5, in line 17, after “oral”, insert “OR MADE THROUGH AN ELECTRONIC PRESCRIPTION”.

RATIONALE: Aligns SB 166 with HB 512.

Amendment 4:

On page 5, in line 23 – after “PRESCRIPTION”, strike “ELECTRONICALLY” and substitute “USING AN ELECTRONIC PRESCRIPTION FOR A CONTROLLED DANGEROUS SUBSTANCE, AS DEFINED IN § 5-101 OF THE CRIMINAL LAW ARTICLE”.

RATIONALE: As drafted, the provision mandates e-prescribing of all prescriptions issued by a prescriber with a CDS registration, not just the CDS prescriptions written by that individual.

Amendment 5:

On page 5, after line 30 – insert “(III) – THE PRESCRIPTION IS ISSUED BY A HEALTH CARE PRACTITIONER OUTSIDE THE STATE;” and renumber accordingly.

RATIONALE: If a prescription is valid in the state in which it is created, such as Virginia, then a Maryland pharmacy should be able to fill it within the clinical discretion of the pharmacist.

Amendment 6:

On page 5, in line 31 – strike “**(III) THE PRESCRIBING ENTITY AND DISPENSING ENTITY OF THE DRUG OR DEVICE ARE THE SAME;**” and substitute “**(IV) THE PRESCRIBING HEALTH CARE PRACTITIONER ALSO DISPENSES THE DRUG;**”.

RATIONALE: Technical amendment suggested by the MDH’s Attorney General. Entities do not prescribe or dispense CDS; individual practitioners do. There are no CDS that are medical devices.

Amendment 7:

On page 6, in line 6, strike “OR”

On page 6, in line 8, after “PROVIDED;”, insert “OR”

On page 6, after line 8, insert “**4. IS INCARCERATED IN A STATE CORRECTIONAL FACILITY, AS DEFINED IN § 1-101 OF THE CORRECTIONAL SERVICES ARTICLE;**”.

RATIONALE: Exception requested by DPSCS.

Amendment 8:

On page 6, strike in their entirety lines 18 through lines 25, inclusive.

RATIONALE: The DEA regulations require a prescription for CDS to specifically state a patient's name and address (21 CFR 1306.05(a)). Therefore, this exception would never be applicable and should be removed.

Amendment 9:

On page 8, in line 24, after “ARTICLE”, strike “SHALL” and substitute “MAY”.

RATIONALE: Conforms SB 166 to HB 512 and 692.

Amendment 10:

On page 9, line 16, strike the brackets around “or”

On page 9, line 18, strike “; or” and substitute “.”

On page 9, strike line 19 – Strike this line.

RATIONALE: It is not necessary or appropriate, as lines 15 through 16 already address the issue.

Amendment 11:

On page 10, strike lines 4 through lines 25, inclusive.

On page 10, in line 26, after “SECTION”, strike “3” and substitute “2”.

On page 10, in line 27, strike after “2021.” through line 29, inclusive.

RATIONALE: Conforms to HB 512 and HB 692. Workgroup no longer needed.