BRIAN E. FROSH
Attorney General

ELIZABETH F. HARRIS
Chief Deputy Attorney General

CAROLYN QUATTROCKI
Deputy Attorney General

STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL

FACSIMILE NO.
(410) 576-6571

WRITER'S DIRECT DIAL NO.
(410) 576-6515

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To: The Honorable Shane E. Pendergrass
Chair, Health and Government Operations Committee

From: The Office of the Attorney General

Re: House Bill 692 (Drugs and Devices - Electronic Prescriptions - Controlled Dangerous Substances): Letter of information, with amendments

House Bill 692 is substantially similar to House Bill 512 (Drugs and Devices - Electronic Prescriptions - Controlled Dangerous Substances), with one notable difference. In the definition of electronic prescription, this bill provides that a prescription for a controlled dangerous substance must comply with the requirements of 21 CFR 1306.08 and 21 CFR 1311.

As of January 1, 2021, under these federal regulations, Medicare Part D will not reimburse for CDS prescriptions unless they are e-prescribed using new security standards. We submit express incorporation would be premature because the federal antitrust litigation by the Federal Trade Commission (FTC) against Surescripts, the proponent of this bill, is not guaranteed to be resolved by January 1, 2021 (see proposed amendments, attached). Pending that resolution, there is uncertainty as to whether or not adopting the new standards "shall be consistent with the objectives of improving (i) patient safety; (ii) the quality of care provided to patients; and (iii) efficiencies, including cost savings, in the delivery of care," as required by 42 U.S.C. §1395w-104(e)(2)-(3)(B)(the statutory authority in part for the new standards), which are also objectives of Maryland's health care policies and laws.

Assuming the federal regulations go into effect, they will apply in Maryland whether or not they are expressly incorporated into Maryland law. We see no reason to extend their reach beyond the Medicare program until concerns about inflated, monopolistic pricing are addressed by the FTC's antitrust litigation. Accordingly, we have added an additional amendment to strike the express incorporation of the federal regulations; the proposed amendments are otherwise the same as for House Bill 512.