



DEPARTMENT OF HEALTH

Larry Hogan, Governor · Boyd K. Rutherford, Lt. Governor · Dennis R. Schrader, Secretary

March 10, 2022

The Honorable Paul G. Pinsky
Chair, Senate Education, Health, and Environmental Affairs Committee
2 West Miller Senate Office Building
Annapolis, MD 21401

RE: Senate Bill 865 – Controlled Dangerous Substances and Treatment of Chronic Pain and Long Term Oxygen Use Patients (Continuity of Care Act of 2022) – Letter of Information

Dear Chair Pinsky and Committee Members:

The Maryland Department of Health (MDH) and the Maryland Board of Pharmacy (the Board) are submitting this joint letter of information for Senate Bill (SB) 865 – Controlled Dangerous Substances and Treatment of Chronic Pain and Long Term Oxygen Use Patients (Continuity of Care Act of 2022).

MDH is charged with ensuring that controlled substances are prescribed for a legitimate medical purpose and are not abused. SB 865 will limit the ability of MDH to enforce the Controlled Substances Act by not allowing civil or criminal action to be taken against a pharmacy or pharmacist for dispensing an opioid confirmed by the prescribing practitioner.

SB 865 mandates a pharmacist dispense a prescription, if the prescriber confirms that the prescription is for an existing medical condition. The responsibility to ensure that prescriptions are issued for a legitimate purpose is the responsibility of both the practitioner and the pharmacist. This bill will remove the clinical decision making from the pharmacist and transfer this responsibility solely to the practitioner. By law, the pharmacist has a corresponding responsibility to ensure that prescriptions are for a legitimate purpose. SB 865 removes the discretion used by a pharmacist to determine if they will dispense or refuse to fill a prescription. Removing a pharmacist's independent clinical decision-making authority conflicts with Maryland's corresponding responsibility regulations (COMAR 10.19.03.07C and 10.34.10.08) and the pharmacist's refusal to fill statute (Md. Code Ann., Health Occ., § 12-501). Furthermore, such an amendment would also arguably be preempted by the federal corresponding responsibility provision. (21 C.F.R. § 1306.04(a)).

Lastly, in order to prescribe controlled substances in Maryland, a pharmacy must have both a Maryland controlled substance registration and a federal Drug Enforcement Administration (DEA) registration. SB 865 proposes to remove civil and criminal penalties for a pharmacy or

pharmacists at a state level, however this does not preclude the federal government from taking an action against the pharmacy.

If you would like to discuss this further, please contact Heather Shek, Director, Office of Governmental Affairs at (410) 260-3190 or heather.shek@maryland.gov or Deena Speights-Napata, Executive Director, Board of Pharmacy at deena.speights-napata@maryland.gov or (410) 764-4753.

Sincerely,



Dennis R. Schrader
Secretary
Maryland Department of Health



Deena Speights-Napata
Executive Director
Maryland Board of Pharmacy