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**STATE OF MARYLAND**  
**OFFICE OF THE ATTORNEY GENERAL**  
**CONSUMER PROTECTION DIVISION**

March 2, 2022

To: The Honorable Delores G. Kelley  
Chair, Finance Committee

From: The Office of the Attorney General's Health Education and Advocacy Unit

Re: Senate Bill 840 (COVID-19 Response Act of 2022): Concern

The Office of the Attorney General's Health Education and Advocacy Unit (HEAU) acknowledges the many ways that the COVID-19 Response Act of 2022 strengthens protections against foreseeable COVID-19 surges in nursing homes, assisted living programs, higher education residential facilities and among the public generally through updates to the testing, contact tracing and vaccination plans effectuated by Chapters 29 and 31 of the 2021 special session, which are extended through December 31, 2023.

The HEAU is concerned, however, that the bill (1) does not extend the current insurance coverage mandate for COVID-19 testing beyond December 31, 2023;<sup>1</sup> (2) would make permanent lax training and oversight provisions for pharmacist orders and administrations of all FDA approved vaccinations for patients age 3 and older, that were enacted as temporary in 2021 with an express provision that permanent authority would *not* be considered without completion of 2 studies by the Maryland Department of Health (MDH) to determine the risks and benefits (neither study is completed) and MDH's recommendation; and (3) repeals the longstanding on-site pharmacist requirement for all pharmacies. We also seek more information about the provision that a "hospital-adjacent urgent care center" is not subject to the rate-setting jurisdiction of the Health Services Cost Review commission (HSCRC) and may set rates and receive reimbursement on an unregulated basis. We address each concern below.

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<sup>1</sup> Md. Code Ann., Ins. § 15-856

(1) We believe the current insurance coverage mandate for COVID-19 testing should not be subject to a termination date because testing remains a key prevention tool and should be provided at no cost for the foreseeable future.

(2) The HEAU and other stakeholders expressed concerns about the temporary authority granted in 2021 to pharmacists to order and administer vaccinations to patients age 3 to 17, including delegation to pharmacy technicians.<sup>2</sup> Chapters 792 and 793 of 2021 authorize a pharmacist, from July 1, 2021, to June 30, 2023, to administer an FDA-approved vaccine to an individual age 3 to 17, if the vaccination is ordered and administered in accordance with ACIP immunization schedules. Stakeholders have been awaiting MDH's 2 mandated studies of the risks and benefits of this temporary authority as well as MDH's recommendation regarding permanent authority. The HEAU is deeply concerned about acting without the data, MDH's studies, and more public process regarding these important public health issues.

We are also concerned that the bill would hollow out essential protections in the temporary scheme. As the Fiscal Note explains at pages 11-12: "The bill also repeals the State Board of Pharmacy's authority to require a pharmacist to submit a registration form to the board that verifies that the pharmacist is qualified to provide vaccinations. Currently, the board requires a Maryland-licensed pharmacist to register prior to administering any vaccine. The process serves as an initial check to ensure that the individual has completed the required training and obtained an in-person CPR certification. Additionally, a pharmacist must renew his or her registration biennially with proof of a current CPR certificate and four vaccination-related continuing education credits. Repeal of the registration process removes the board's ability to confirm that a pharmacist meets specified requirements to administer vaccinations."

(3) The HEAU urges against a repeal of the requirement that a retail pharmacy have a pharmacist on-site during operations. Allowing a pharmacy to run without a pharmacist on-site seems contrary to the public's safety. We hope the committee can obtain information from the Board of Pharmacy regarding opioid diversion by pharmacy technicians--a chronic problem that has, as we understand it, spiked during the pandemic, contributing to the worsening opioid epidemic.<sup>3</sup> We submit that such concerns should be

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<sup>2</sup> [https://mgaleg.maryland.gov/2021RS/chapters\\_noln/Ch\\_792\\_hb1040T.pdf](https://mgaleg.maryland.gov/2021RS/chapters_noln/Ch_792_hb1040T.pdf)  
[https://mgaleg.maryland.gov/cmte\\_testimony/2021/hgo/1q0bgdWpPJOKCuK4ZxJDc8VrbBcZq8XPP.pdf](https://mgaleg.maryland.gov/cmte_testimony/2021/hgo/1q0bgdWpPJOKCuK4ZxJDc8VrbBcZq8XPP.pdf) (HEAU letter of opposition)

<sup>3</sup> <https://www.dea.gov/press-releases/2019/11/21/chicago-pharmacy-technician-sentenced-five-years-prison-stealing-opioids> (Two pharmacy techs "conspired to steal approximately 56,108 pills of hydrocodone and sell them outside the pharmacy")  
<https://www.justice.gov/usao-edmi/pr/pharmacist-and-pharmacy-technician-charged-12-million-illegal-opioid-distribution> (A pharmacist and a pharm technician stole "41,995 dosage units of opioid prescriptions during the course of the conspiracy. These controlled substances had a conservative street value in excess of \$1,200,000.")

addressed with additional safeguards against opioid diversions such as daily inventories and multiple surveillance cameras; instead, this bill suggests removal of on-site oversight.

We also do not believe it is good policy to allow a pharmacy technician who has only trained for 6 hours to administer any FDA approved vaccine to patients age 3 and older, without the on-site presence of a pharmacist, and to expect the technician to know how to respond to life-threatening emergency reactions to vaccines.<sup>4</sup>

cc: Senator Rosapeppe, Sponsor

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<sup>4</sup> The Fiscal Note states at page 11: “Under the bill, the requirement that a licensed pharmacist be physically available in the prescription area or in an area where pharmacy services are provided to supervise the practice of pharmacy and delegated pharmacy acts is repealed. The definition of direct supervision is altered to include supervision of a pharmacy technician through technological means. A pharmacist is authorized to delegate the administration of a vaccine to a pharmacy technician with specified training. The board advises that allowing a pharmacy to operate without the direct supervision of a licensed pharmacist physically available will lead to increased pharmacy concerns and complaints and result in the need to perform additional pharmacy inspections, conduct additional investigations, and potentially hold additional disciplinary hearings. To the extent this occurs, the board advises that it needs up to five additional staff, including one call center representative, two inspectors, two investigators, and one staff attorney. For illustrative purposes only, these additional personnel costs would increase board special fund expenditures by \$392,224 on an annual basis.”