

**JOSELINE A. PEÑA-MELNYK**

*Legislative District 21*  
Prince George's and  
Anne Arundel Counties

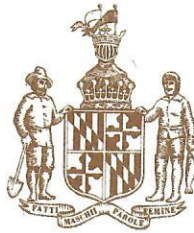
*Vice Chair*

Health and Government  
Operations Committee

*Subcommittees*

Insurance and Pharmaceuticals

Chair, Public Health and  
Minority Health Disparities



## *The Maryland House of Delegates*

ANNAPOLIS, MARYLAND 21401

February 15, 2022

### **HB 462: Health Occupations - Authorized Prescribers – Reporting of Financial Gratuities or Incentives**

#### **Testimony of Delegate Joseline A. Peña-Melnik (FAVORABLE)**

Chair Pendergrass, members of the Health and Government Operations Committee. I seek your support for House Bill 462, which I have the honor to be introducing in support of Senator Kelley and her body of work. This bill would require authorized prescribers who receive a financial gratuity or incentive from a pharmaceutical distributor or manufacturer to file a financial disclosure form with the health occupations board that licenses the authorized prescriber within 30 days after the financial gratuity or incentive is received. By doing so, this bill would empower licensing boards to develop regulations for the targeted and private review of reports required to be submitted to the boards. This bill does not dictate how the boards would go about evaluating these reports, but rather directs the boards to collect this financial data so that they can privately review it through an audit, complaint-triggered investigation or any approach determined by the boards. With this data in hand, the boards can then take appropriate disciplinary action against any authorized prescriber who has received a payment that violates the [Maryland Health Occupations Code](#).

Overprescribing kills patients, and it is no secret that financial relationships between prescribers and industry partners influence prescribing patterns and lead to overprescribing. Studies have demonstrated this association time and time again. In fact, a recent review of the literature revealed that there are at least 30 studies published in medical journals identifying a relationship between payments and increased prescribing of the paying company's drug, increased prescribing costs, and increased prescribing of branded drugs [1]. Twenty-five of these studies even identified a dose-response relationship, meaning prescribers are not only more likely to prescribe the company's drug, but they are prescribing it in higher doses [1]. The dangers of this is well-documented when it comes to drugs like opioids – it can cost lives. A study published in a leading medical journal showed that a higher number of payments to physicians from opioid manufacturers is associated with increased opioid prescribing and increased deaths from prescription opioid overdoses across the nation's counties [2]. We are already fighting a terrible opioid epidemic that has claimed the lives of 2,087 Marylanders in 2019 alone, and is showing no signs of abating [3]. It is therefore incumbent upon us as a state to take preventive action against prescribing behaviors that pose a risk of endangering the public's health.

Existing federal law known as the Open Payments program requires applicable manufacturers of drugs, devices, and biological or medical supplies to annually report to the federal Secretary of Health and Human Services certain payments and other transfers of value made to authorized prescribers. The federal Centers for Medicare and Medicaid Services makes this Open Payments data available to the public via a federal government internet

*Annapolis Office*

The Maryland House of Delegates  
6 Bladen Street, Room 241  
Annapolis, Maryland 21401  
410-841-3502 · 301-858-3502  
800-492-7122 Ext. 3502  
Joseline.Pena.Melnik@house.state.md.us

*District Office*

P. O. Box 1251  
College Park, Maryland 20741-1251

[website](#) [4]. While this has led to improved transparency, no action has been taken to improve accountability. While in many cases, financial relationships between prescribers and the pharmaceutical industry are benign and actually beneficial for medical education and practice, these relationships can lead to conflicts of interests that can harm patients. Since the inception of the Open Payments program, industry-influenced prescribing has remained rampant with annual payments exceeding 8 billion dollars [5]. Recent studies of the data collected by Open Payments have also shown an alarming change in payment dynamics over the years following its inception. While annual payment values have decreased for physicians receiving lower-value payments (less than 50,000 dollars), reflecting an increased reluctance to accept payments among many physicians, those receiving higher-value total payments (more than 50,000 dollars) continued to receive similar or greater amounts, “perhaps reflecting industry strategy that concentrates payments, for which greater return on investment is anticipated” [6].

Another study focusing on orthopedic surgeons, who have the biggest share of these payments among physicians, showed an increase in both the number of surgeons receiving payments and the median payment value received per surgeon between 2014 and 2019, with the top 25% percentile of orthopedic surgeons receiving more than 95% of payments [7]. So clearly, the increased transparency conveyed by the Open Payments database has uncovered worrisome trends that, absent any state regulation, will continue to go unchecked. Our state health occupation boards are well-positioned to use reports of financial gratuities submitted by their licensees in a targeted manner, so as to regulate prescriber-industry financial relationships and to ensure boundaries are not overstepped in a way that damages public health. They can use this information to audit, investigate and take disciplinary action where there is legal ground to do so. As always, we appreciate the expertise and efforts of our health occupation boards. Through this bill, we seek to empower them and add a tool to their toolbox to protect Marylanders from the consequences of conflicts of interest.

Thank you for allowing me to present House Bill 462. I respectfully request a favorable report.

References:

[1] <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8315858/pdf/nihms-1722666.pdf>

[2] <https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2720914>

[3] <https://nida.nih.gov/drug-topics/opioids/opioid-summaries-by-state/maryland-opioid-involved-deaths-related-harms>

[4] <https://www.cms.gov/openpayments>

[5] <https://www.policymed.com/2019/06/open-payments-annual-report-to-congress-shows-fourth-straight-year-of-8-billion-plus-in-payments.html>

[6] <https://jamanetwork.com/journals/jama/article-abstract/2772483>

[7] [https://journals.lww.com/jaaosglobal/Fulltext/2021/05000/Review\\_of\\_Industry\\_Payments\\_to\\_General\\_Orthopaedic\\_8.aspx](https://journals.lww.com/jaaosglobal/Fulltext/2021/05000/Review_of_Industry_Payments_to_General_Orthopaedic_8.aspx)