



Board of Physicians

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

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2022 SESSION POSITION PAPER

BILL NO.: SB 159 – Health Occupations – Authorized Prescribers – Financial Reporting
COMMITTEE: Health and Government Operations
POSITION: Support with Amendments

POSITION & RATIONALE:

The Maryland Board of Physicians (the Board) is submitting this letter of support with amendments for Senate Bill (SB) 159 – Health Occupations – Authorized Prescribers – Financial Reporting.

The Board appreciates that the reporting requirements for physicians in SB 159 were removed in favor of using existing data available on the Centers for Medicare and Medicaid Services (CMS) OpenPayments database. Section 6002 of the Affordable Care Act, also known as the Physician Payments Sunshine Act, requires all manufacturers and distributors of medical products to disclose to CMS all payments or financial incentives made to covered recipients, and this information is available online in the CMS OpenPayments database. Because this data is already reported and publicly available, requiring physicians to submit a separate report for all financial disclosures would be duplicative and unnecessary. The Board supports the amended language that allows the Board to use this existing database to track payments to physicians.

However, physicians are not the only covered recipient under the CMS OpenPayments database. As of January 1, 2021, the Open Payments program was expanded to include five additional provider types, including physician assistants. The first year of this data will be published in June of 2022. Additionally, other practitioners including doctors of podiatric medicine and doctors of dentistry are included under the CMS OpenPayments definition of physician, and also have financial disclosures available online. As the majority of authorized prescribers in Maryland are currently considered covered recipients for the purposes of the CMS OpenPayments database, the Board recommends removing the physician-only exception in favor of expanded language that exempts all covered recipients from the reporting requirements. All health occupations boards that regulate a covered recipient would then be required to use the existing CMS OpenPayments database to monitor prescribers who received financial gratuities or incentives beyond a certain threshold, and to post links to the CMS OpenPayments database to the health occupations board's website and, if applicable, to the authorized prescriber's public practitioner profile. This would mean that authorized prescribers such as physician assistants, who are

covered under the current database, would avoid the burden of reporting financial disclosures that are already public record.

The Board also has concerns regarding the current language for reviewing financial gratuities and incentives. SB 159 currently requires the Board to review all financial gratuities and incentives that a licensee receives that exceed a cumulative amount of \$5,000 per year, and the prescribing history and patterns of the licensee regarding all patients of the licensee to determine whether to take action against the licensee.

A review of the CMS OpenPayments database indicated that there are 619 Maryland physicians who received more than \$5,000 in financial gratuities and incentives from covered entities in 2020. The Board does not have access to a physician's prescribing data or medical records. In order to perform the review mandated in SB 159, the Board would be required to issue subpoenas requesting prescribing records for all patients of the relevant physician, and review those records to determine if further action is warranted. This would mean issuing hundreds of subpoenas and reviewing tens of thousands of patient records annually. While this review process is preliminary rather than a full investigation, even this preliminary review would require a significant amount of research and analysis. This would represent almost double Board's current caseload for investigations. The Board recommends removing the requirement that records of ALL patients must be reviewed.

Finally, the Board is unclear regarding the origins of the \$5,000 threshold found on page 4, line 3 and page 4, line 27 of the bill. The Board was unable to find any cases where a physician was charged with violating anti-kickback or self-referral laws for remuneration of only \$5,000. In a recent case before the Board involving a physician who was charged with violating anti-kickback laws, the physician in question had received a total of \$63,988 in a single year, \$32,717 of which came from a single pharmaceutical company. The Board would like clarification regarding why the \$5,000 threshold was chosen, and proposes raising the threshold for review to \$25,000.

The Board supports the intent behind SB 159 and appreciates the sponsor's willingness to find a workable solution that will allow for proper oversight of prescribers without creating undue burdens on practitioners or regulatory boards. The Board urges the Committee to issue a favorable report with the Board's amendments on SB 159.

Thank you for your consideration. For more information, please contact Matthew Dudzic, Manager of Policy and Legislation, Maryland Board of Physicians, 410-764-5042.

Sincerely,



Damean W. E. Freas, D.O.
Chair, Maryland Board of Physicians

The opinion of the Board expressed in this document does not necessarily reflect that of the Maryland Department of Health or the Administration.