Agency Response to Economic Impact Analysis (EIA)

The Board of Pharmacy does not concur with the Analysis of the Department of Planning and Budget on proposed amended regulations for 18VAC110-20-10 et seq., Regulations Governing the Pharmacy, relating to the prohibition on offering inducements to transfer prescriptions.

The EIA fails to note the high cost of adverse drug interactions, one of the problems associated with patients moving prescriptions from pharmacy to pharmacy, following inducements such as coupons and rebates. A learning module developed by the Food and Drug Administration on the Prevalence and Incidence of Adverse Drug Reactions (ADRs) uses research and statistics from the Institute of Medicine and other sources, such as the Journal of the American Medical Association (JAMA). It reports that ADRs are one of the leading causes of morbidity and mortality in health care. The Institute of Medicine reported in January of 2000 that from 44,000 to 98,000 deaths occur annually from medical errors. Of this total, an estimated 7,000 deaths occur due to ADRs. The exact number of ADRs is not certain, but whatever the true number is, ADRs represent a significant public health problem that is, for the most part, preventable.

When a patient requests transfer of a prescription, it is commonplace for prescriptions to be transferred verbally from one pharmacist to another, a process that can lead to transcriptions errors if the prescription information is communicated incorrectly or misunderstood by the receiving pharmacist. Inducing patients to transfer prescriptions would appear to unnecessarily increase risk associated with the transfer process which could lead to patient harm.

On page 2 of the EIA, the analyst makes the statement that “Banning the inducements can be seen as stopping competition between the drug stores and essentially enabling them all to charge a higher price.” Apparently, the intent of the regulatory action has been misread, because it does not “ban inducements” that pharmacies can offer to their customers. Pharmacies may continue to advertise lower prices and offer affinity rewards for filling prescriptions; the ban would be on inducements to switch prescriptions from drug store to drug store. There are a variety of ways in which a pharmacy can lower the cost of prescription drugs (i.e. $4 antibiotics), so competition is not impeded by enactment of this regulation.

The EIA also fails to note that the issue of inducements to transfer has already been addressed by the U. S. Department of Justice. In 2012, DOJ resolved allegations against Walgreens Pharmacy with a $7.9 million payment because the chain offered beneficiaries of government health care programs (Medicare, Medicaid, TRICARE, etc.) inducements that are prohibited by law to transfer prescriptions to Walgreen pharmacies. Quotes from federal law enforcement illustrate the need to enact such a prohibition in Virginia. The U. S. Attorney for the Eastern District of Michigan said, “Continuity with a pharmacist is important to detect problems with dosages and drugs interactions. Patients should make decisions based on legitimate health care needs, not on inducements like gift cards.” The

Inspector General for the U. S. Department of Health and Human Services, said, “Violating Federal health care laws, as Walgreens allegedly did by offering incentives for new business, cannot be tolerated.”

The proposal of the Virginia Board follows the action of the Justice Department for the reasons noted.