

Department of Legislative Services
 Maryland General Assembly
 2011 Session

FISCAL AND POLICY NOTE

Senate Bill 560 (Senator Pugh, *et al.*)
 Education, Health, and Environmental Affairs

Health Occupations - State Board of Naturopathic Medicine

This bill establishes the State Board of Naturopathic Medicine within the Department of Health and Mental Hygiene (DHMH) and requires individuals to be licensed to practice “naturopathic medicine” by January 1, 2013. The bill also establishes the State Board of Naturopathic Medicine Fund and a Naturopathic Formulary Council.

Uncodified language specifies that it is the intent of the General Assembly that general funds be used to support the board in fiscal 2012. When special funds become available, the general fund must be reimbursed for start-up costs.

Fiscal Summary

State Effect: General fund expenditures increase by at least \$20,700 in FY 2012 to administer the board. Special fund revenues increase by an indeterminate amount beginning in FY 2013 from new licensing fee revenues and potentially by an additional but minimal amount due to the bill’s civil penalties. Special funds would be used to reimburse the general fund for the board’s start-up costs in FY 2013 and 2014. Future year expenditures reflect annualization and inflation for administrative costs.

(in dollars)	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
SF Revenue	\$0	-	-	-	-
GF Expenditure	\$20,700	\$0	\$0	\$0	\$0
SF Expenditure	\$0	\$43,100	\$44,100	\$35,100	\$36,100
Net Effect	(\$20,700)	(-)	(-)	(-)	(-)

Note: (-) = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: None.

Small Business Effect: Meaningful for naturopathic physicians who must be licensed under the bill.

Analysis

Bill Summary: “Naturopathic medicine” is a system of primary health care that uses patient education and naturopathic therapies and therapeutic substances to prevent, diagnose, and treat human health conditions, injury, and disease; promote or restore health; and support and stimulate a patient’s inherent self-healing process.

Naturopathic Physician License

The bill specifies age, education, examination, and other credentialing requirements that an applicant has to meet to be licensed. A licensee may:

- order and perform physical and laboratory examinations for diagnostic purposes;
- order diagnostic imaging studies;
- dispense, administer, order, prescribe, or perform (as relevant) natural medicines, dietary supplements, nonprescription drugs, and certain prescription drugs; hydrotherapy, naturopathic physical medicine, electromagnetic energy, colon hydrotherapy, and therapeutic exercise; certain devices; health education and counseling; minor office procedures under certain circumstances; naturopathic musculoskeletal manipulation; and natural hormones, antibiotics, and topical medicines; and
- utilize routes of administration, including oral, nasal, auricular, ocular, rectal, vaginal, transdermal, intradermal, subcutaneous, intravenous, and intramuscular.

A licensee may not prescribe, dispense, or administer any controlled substance or device, except as authorized by the board; perform surgical procedures other than minor office procedures; practice or claim to practice as a medical doctor, osteopath, dentist, podiatrist, or other specified health care professional; use general or spinal anesthetics; administer ionizing radioactive substances for therapeutic purposes; perform chiropractic adjustments unless the licensee is also a licensed chiropractor; perform acupuncture unless the licensee is also a licensed acupuncturist; perform minor office procedures unless approved by the board; or prescribe prescription drugs unless approved by the board. The bill specifies conditions for the board to approve a licensee to perform minor office procedures or prescribe prescription drugs.

The bill also authorizes the board to waive the examination requirement for individuals licensed as a naturopathic physician in another other state. The bill specifies licensing procedures for biennial renewal, inactive status, and reinstatement.

State Board of Naturopathic Medicine

The board consists of seven members: five naturopathic physicians and two consumers. Board members serve staggered four-year terms and are entitled to compensation in accordance with the board's budget and reimbursement for expenses. The board may employ a staff in accordance with its budget. The board is charged with such responsibilities as adopting regulations; appointing committees; establishing procedures for the issuance of reciprocal licenses; evaluating the content of any clinical, practical, or residency requirement; establishing examination standards; and adopting a code of ethics. A person must have certain immunity from liability for giving information to the board or otherwise participating in its activities.

The bill subjects the new licensure program to periodic review under the Maryland Program Evaluation Act, as with other health occupations boards, and terminates the program on July 1, 2021.

State Board of Naturopathic Medicine Fund

The fund is a continuing, nonlapsing fund. The Legislative Auditor must audit the accounts and transactions of the fund. The board may set reasonable fees for the issuance and renewal of licenses and its other services that approximate the cost of maintaining the board. The fund must be used to cover the actual documented direct and indirect costs of fulfilling the statutory and regulatory duties of the board.

Naturopathic Formulary Council

The bill establishes a Naturopathic Formulary Council consisting of five members including two pharmacists and a physician. The council must establish a naturopathic formulary to be transmitted to the board and reviewed annually or at the request of the board. The formulary may not go beyond the scope of natural medicines or prescription drugs and devices covered by approved naturopathic medicine programs or board-approved continuing education or include medicines or devices that are inconsistent with the training provided by approved naturopathic medical programs or board-approved continuing education. A naturopathic physician may not dispense, administer, or prescribe any prescription drug or device unless it is included in the naturopathic formulary.

Disciplinary Grounds and Reporting

The board must investigate complaints and provide information on the status of complaints. The bill sets specific grounds for disciplinary action against a licensee or

applicant. The board may deny a license, reprimand any licensee, place any licensee on probation, or suspend or revoke a license. The board must provide an applicant or licensee an opportunity for a hearing. Any person aggrieved by a final decision of the board with respect to disciplinary matters may take a direct judicial review. There are no additional penalties for disciplinary violations.

Licensed naturopathic physicians, licensed health care practitioners, health care facilities, State agencies, and State or local law enforcement agencies must file a written report with the board if the person has information that a licensee is or may be medically or legally incompetent, engaged in the unauthorized practice of naturopathic medicine, guilty of unprofessional conduct, or mentally or physically unable to engage safely in the practice of naturopathic medicine. A health care facility must promptly report to the board if a licensee voluntarily resigns, limits the licensee's staff privileges, or fails to reapply for hospital privileges, and the action of the licensee occurs while the licensee is under investigation for possible medical incompetence, unprofessional conduct, or mental or physical impairment. The board may impose a monetary penalty of up to \$5,000 for failure to report.

Current Law/Background: Naturopathic medicine is based on the belief that the human body has an innate healing ability. Naturopathic physicians teach their patients to use diet, exercise, lifestyle changes, and natural therapies to enhance their bodies' ability to ward off and combat disease. Naturopathic physicians craft treatment plans that blend modern medical science and traditional natural medical approaches to treat disease and restore health.

Fifteen states, the District of Columbia, and five Canadian provinces currently license naturopathic physicians. In these states, naturopathic physicians must graduate from an accredited four-year residential naturopathic medical school and pass the Naturopathic Physicians Licensing Examination Board (NPLEX) examination. In states that do not currently license naturopathic physicians, many individuals practicing naturopathic medicine hold a license in at least one of the states that do issue such licenses.

According to the Maryland Association of Naturopathic Physicians, 26 naturopathic physicians practice in Maryland. The Maryland Medical Practice Act sets forth the laws governing the licensure of physicians and defines the acts that constitute the practice of medicine. The State Board of Physicians is responsible for regulating, licensing, and disciplining physicians and other allied health professionals. Naturopathic physicians are not currently regulated by the State.

In *Aitchison v. State*, 204 Md. 538, 105 A.2d 495, *certiorari* denied, 348 U.S. 880, 75 S.Ct. 116, 99 L. Ed. 692 (1954), the Court of Appeals of Maryland held that

naturopathic practitioners are “practicing medicine” as defined in the State Medical Practice Act and that a person desiring to engage in the healing art by the practice of naturopathy may not do so without a license to practice medicine. In response, House Bill 129 of 1955 was introduced to establish a Board of Naturopathic Examiners that would have licensed naturopathic physicians. In *Hitchcock v. Collenberg*, 140 F. Supp. 894 (D.Md. 1956), aff’d, 353 U.S. 919, 77 S.Ct. 679, 1 L. Ed. 2d 718 (1957), the United States District Court explained that “...Maryland law does not prohibit the practice of naturopathy. Any person who has met the qualifications necessary to secure a license to practice medicine...may apply the principles of naturopathy in his practice.” In *Hitchcock v. State*, 213 Md. 273, 131 A.2d 714 (1957), the Court of Appeals of Maryland affirmed a conviction by a jury of the unlawful practice of medicine by a graduate of a college of naturopathy who did not have a license to practice medicine in Maryland. Current Maryland law does not specifically address the practice of naturopathic medicine.

State Fiscal Effect: Establishment and maintenance of an independent health occupations board requires a minimum amount of fixed costs. As licensure is required beginning January 1, 2013, this analysis assumes that expenses will begin January 1, 2012. Based on costs incurred by other small health occupations boards, board expenditures increase by at least \$20,652 in fiscal 2012. This includes a salary for one part-time (20%) program manager, fringe benefits, one-time start-up costs, and ongoing operating expenses, including DHMH’s indirect cost assessment and the board’s contribution for the staff members that several other health occupations boards and commission share (*i.e.*, legal, fiscal, and information technology support). This estimate does not reflect investigative services, any costs associated with the Naturopathic Formulary Council, postage and printing, board member per diems, or mileage reimbursement. Per the bill, general funds will be used to cover board expenses in fiscal 2012, with special fund expenditures beginning in fiscal 2013.

	General Funds	Special Funds
	<u>FY 2012</u>	<u>FY 2013</u>
New Permanent Position	0.2	
Salary and Fringe Benefits	\$7,491	\$15,720
Shared Support Staff and Indirect Costs	7,500	15,150
Other Operating Expenses	5,661	2,229
Partial Repayment of General Funds	<u>N/A</u>	<u>\$10,000</u>
Total Board Expenditures	\$20,652	\$43,099

Future year expenditures reflect a full-year part-time (20%) salary with 4.4% annual increases and 3% employee turnover as well as 1% annual increases in ongoing operating expenses.

Under the bill, the board is authorized to set reasonable fees for licensure. Fees charged must be set as to approximate the cost of maintaining the board. Naturopathic physicians will renew on a biennial basis, with the majority of revenues received in odd-numbered fiscal years beginning in fiscal 2013. These revenues would need to cover the cost of the board for the two-year licensing period.

Based on an estimated 26 naturopathic physicians in the State plus an estimated 8 new licensees annually, biennial license fees will need to be at least \$2,000 to cover the cost of the board for fiscal 2013-2014. Though the timing of repayment to the general fund is not specified in the bill, this analysis assumes that an additional assessment of \$325 will need to be levied on licensees in fiscal 2013 and 2014 to repay general funds used to support the board in fiscal 2012.

The highest current health occupations board license fee is \$1,050 every two years for podiatrists. The current renewal fee for physicians is \$436 every two years. If licensure fees were set at \$1,050, board special fund revenues would be \$35,700 over a two-year period based on a total of 34 licensees (26 in fiscal 2013 and 8 in 2014). In the fiscal 2013-2014 licensure cycle, this level of revenues results in a special fund shortfall of \$31,455, which does not factor in repayment of the general fund. This analysis does not account for reciprocity with the District of Columbia, which licenses naturopathic physicians (a total of 24 are currently licensed). To the extent that licensure numbers are higher, special fund revenues would increase.

Additional Comments: Legislative Services concludes that an insufficient number of naturopathic physicians practice in the State to support an independent health occupations board. Given the potential number of licensees, regulation under an advisory committee as part of an existing health occupations board, such as the boards of Acupuncture, Chiropractic and Massage Therapy Examiners, or Physicians, would be a more financially viable option.

Legislative Services also notes that, under the bill, five naturopathic physicians – 19% of the current number of naturopathic physicians in the State – would serve on the board. Furthermore, while the bill prohibits the practice of naturopathic medicine without a license, there are no civil or criminal penalties for doing so.

SB 357 of 2010 would have exempted wellness practitioners from licensure and other requirements of the Maryland Medical Practice Act if the wellness practitioner provides complementary and alternative health services in accordance with the bill. The bill

received an unfavorable report from the Senate Education, Health, and Environmental Affairs Committee. Its cross file, HB 541, received an unfavorable report from the House Health and Government Operations Committee.

Additional Information

Prior Introductions: None.

Cross File: HB 1100 (Delegate B. Robinson, *et al.*) - Health and Government Operations.

Information Source(s): American Association of Naturopathic Physicians, Maryland Association of Naturopathic Physicians, Department of Budget and Management, Office of Administrative Hearings, Department of Health and Mental Hygiene, Department of Legislative Services

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