

Department of Legislative Services
 Maryland General Assembly
 2013 Session

FISCAL AND POLICY NOTE

Senate Bill 783 (Senator Pugh, *et al.*)
 Education, Health, and Environmental Affairs

State Board of Physicians - Naturopathic Doctors

This bill requires individuals, by January 1, 2015, to be licensed to practice “naturopathic medicine” by the State Board of Physicians (MBP) and establishes a Naturopathic Medicine Advisory Committee within MBP. The membership of MBP is increased from 21 to 22 members with the addition of a naturopathic doctor appointed at the Governor’s discretion from a list submitted by the Maryland Association of Naturopathic Physicians.

Fiscal Summary

State Effect: Special fund expenditures for MBP increase by at least \$53,400 in FY 2014 to establish a licensure program for naturopathic doctors. Special fund revenues increase by approximately \$124,800 in FY 2015 from new licensing fee revenues. Future year expenditures reflect annualization and inflation. Future year revenues reflect annual renewal and growth in the number of licensees.

(in dollars)	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018
SF Revenue	\$0	\$124,800	\$41,600	\$40,000	\$43,200
SF Expenditure	\$53,400	\$69,400	\$38,800	\$40,300	\$42,000
Net Effect	(\$53,400)	\$55,400	\$2,800	(\$300)	\$1,200

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

Local Effect: None.

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

Analysis

Bill Summary: “Naturopathic medicine” means the prevention, diagnosis, and treatment of human health conditions, injury, and disease using patient education and naturopathic therapies and therapeutic substances recognized by the Council of Naturopathic Medical Education and approved by MBP.

License to Practice Naturopathic Medicine: The bill specifies age, education, examination, and other credentialing requirements that an applicant has to meet to be licensed as a naturopathic doctor.

Among other qualifications that must be met, an applicant must submit to the board a board-approved written attestation that states that the applicant will (1) refer patients to and consult with physicians and other health care providers licensed or certified under the Health Occupations Article as needed and (2) require patients to sign a consent form that states that the applicant’s practice of medicine is limited to naturopathic medicine.

A license to practice naturopathic medicine authorizes a licensee, consistent with naturopathic education and training, to:

- order and perform physical and laboratory examinations for diagnostic purposes;
- order diagnostic imaging studies and interpret the reports of such studies;
- dispense, order, or administer natural medicines of mineral, animal, or botanical origin;
- administer or perform hydrotherapy, naturopathic physical medicine, electromagnetic energy, colon hydrotherapy, and therapeutic exercise, except in cases where referral to another health care provider is appropriate;
- dispense, administer, or order certain devices;
- provide health education and counseling; and
- perform naturopathic musculoskeletal mobilization.

A licensee may not (1) prescribe, dispense, or administer any controlled substance or device, except as authorized by the board; (2) perform surgical procedures other than minor office procedures; (3) practice or claim to practice as a medical doctor, osteopath, dentist, podiatrist, or other specified health care professional; (4) use general or spinal anesthetics; (5) administer ionizing radioactive substances for therapeutic purposes; (6) perform chiropractic adjustments unless the licensee is also a licensed chiropractor; (7) perform acupuncture unless the licensee is also a licensed acupuncturist; (8) perform minor office procedures unless approved by the board; or (9) prescribe prescription drugs unless approved by the board. The bill specifies conditions for the board to approve a licensee to perform minor office procedures.

The following individuals are exempt from the licensure requirement: (1) an individual employed by the United States to practice naturopathic medicine while practicing within the scope of employment; (2) a student enrolled in an approved naturopathic medical program; or (3) an individual who is licensed in another state to practice naturopathic medicine and whose practice in this State is limited to examination, recommendation, or testimony in litigation.

The bill authorizes the board to waive any examination requirement for individuals licensed as a naturopathic physician in any other state. The bill specifies licensing procedures for initial licensure, annual renewal, inactive status, and reinstatement. A license is valid for one year.

Naturopathic Medicine Advisory Committee: The committee consists of six members: four naturopathic doctors, one practicing licensed physician or practicing doctor of osteopathy, and one consumer. Committee members serve staggered four-year terms and may not serve more than two consecutive full terms. The committee must develop and recommend to the board regulations, procedures for licensure by reciprocity, examination standards, and a code of ethics; evaluate the content of any clinical, practical, or residency requirement for licensure; and provide any service or perform any function that is necessary to fulfill its purpose.

Disciplinary Grounds and Reporting: The board must investigate complaints and provide information on the status of a complaint to the person who made the complaint. 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 appeal. There are no additional penalties for disciplinary violations.

If MBP dismisses charges against a licensee, it must expunge all record of the charges three years after the charges are dismissed. If MBP issues an advisory opinion, at the request of a licensee, MBP must expunge all record of the matter five years after the advisory opinion is issued.

Licensed naturopathic doctors, 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 (1) a licensee voluntarily resigns, voluntarily limits his or her staff privileges, or

fails to reapply for hospital privileges and (2) 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. Assessment of a penalty must be supported by substantial evidence and may be appealed to the Secretary of Health and Mental Hygiene.

Program Evaluation: 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, 2023.

Naturopathic Formulary: Uncodified language requires MBP to convene a workgroup to study the development of a naturopathic formulary in the State. The workgroup must review the naturopathic formularies developed in other states, make recommendations regarding the composition of a naturopathic formulary council, and make recommendations regarding the establishment of a naturopathic formulary. By July 1, 2014, the workgroup must report its findings and recommendations to specified committees of the General Assembly.

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.

Sixteen states, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, and several Canadian provinces currently license naturopathic doctors. Typically, to qualify for licensure, naturopathic physicians must have graduated from an accredited four-year residential naturopathic medical school and pass the Naturopathic Physicians Licensing Examination Board 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, 25 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. MBP is responsible for regulating, licensing, and disciplining physicians and other allied health professionals. Naturopathic doctors 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.

Regulations of Allied Health Professions by MBP: The mission of MBP is to assure quality health care in Maryland through the efficient licensure and effective discipline of health providers under its jurisdiction, by protecting and educating clients/customers and stakeholders and enforcing the Maryland Medical Practice Act. The board has regulatory authority over physicians, physician assistants, radiographers, radiation therapists, nuclear medicine technologists, radiologist assistants, respiratory care practitioners, polysomnographic technologists, athletic trainers, and perfusionists.

Currently, the following six advisory committees assist MBP in its oversight role: the Physician Assistant Advisory Committee; the Radiation Therapy, Radiography, Nuclear Medicine Technology Advisory, and Radiology Assistance Committee; the Respiratory Care Professional Standards Committee; the Polysomnography Professional Standards Committee; the Athletic Trainer Advisory Committee, and the Perfusion Advisory Committee. Only one of these professions (physician assistants) is represented on MBP.

State Fiscal Effect: Special fund expenditures for MBP increase by \$53,354 in fiscal 2014, which accounts for the bill’s October 1, 2013 effective date. This estimate reflects the cost of hiring one grade 14 administrative officer to help develop regulations, recruit members for and staff the advisory committee, and staff the required workgroup on naturopathic formularies, as well as per diem and mileage reimbursement for one new MBP member. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses. This position reflects similar staffing provided for the regulation of perfusionists by MBP. Per diem and mileage reimbursement are based on a \$250 per diem and an average of \$33.90 in mileage reimbursement per meeting for a total of nine meetings in the first year. MBP members typically attend 18 meetings per year; this

assumes the naturopathic doctor board member will not be appointed until January 1, 2014.

Position	1
Salary and Fringe Benefits	\$45,753
Per Diems and Mileage Reimbursement	2,555
One-time Start-up Costs	4,615
Ongoing Operating Expenses	<u>431</u>
Total FY 2014 State Expenditures	\$53,354

MBP indicates that a full-time position is necessary to staff the licensure program; however, the Department of Legislative Services (DLS) respectfully disagrees. Once the licensure program is established and naturopathic doctors have been initially licensed in fiscal 2015, a part-time (50%) position should be sufficient to renew licenses and staff the advisory committee beginning in fiscal 2016. Thus, future year expenditures reflect a full salary (reduced to a 0.5 position in fiscal 2016) with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

As the board is special funded, licensure fees must be set to cover the cost of licensure. **Exhibit 1** shows the estimated number of naturopathic doctors expected to seek licensure, the estimated cost of the licensure program for each year, the estimated fee levels necessary to cover these costs, and the estimated revenues. In fiscal 2015, it is assumed that the license fee will be set to cover the cost of licensure for fiscal 2014 and 2015, as staff will be brought on to establish the licensure program in fiscal 2014.

Exhibit 1
Estimated Cost of Licensure and Anticipated Revenues
Under the Bill

	<u>FY 2015</u>	<u>FY 2016</u>	<u>FY 2017</u>	<u>FY 2018</u>
Number of Naturopathic Doctors	24	32	40	48
Cost of Licensure¹	\$122,710	\$38,753	\$40,348	\$42,018
Annual Licensure Fee	5,200	1,300	1,000	900
Revenues	\$124,800	\$41,600	\$40,000	\$43,200

¹The cost of licensure in fiscal 2015 reflects total costs for fiscal 2014 and 2015.

Source: Department of Legislative Services

Based on these assumptions, special fund revenues for MBP increase by approximately \$124,800 in fiscal 2015 from licensure fees. Future years reflect growth in the number of licensees and adjustment of licensure fees to reflect the actual cost of licensure.

Actual license fees and revenues will depend on the number of naturopathic doctors that seek licensure under the bill, as well as the actual costs incurred by MBP. There are currently approximately 24 naturopathic doctors in Maryland. To the extent that the number of licensees does not increase as anticipated in the estimate, license fees may need to be significantly higher. Furthermore, DLS notes that all other licenses under MBP are renewed on a biennial rather than an annual basis. Thus, if biennial licensure were required, naturopathic doctors could need to pay a \$6,500 biennial license fee in fiscal 2015 and at least a \$1,900 biennial license fee in fiscal 2017.

Additional Information

Prior Introductions: None.

Cross File: HB 1029 (Delegate Oaks, *et al.*) - Health and Government Operations.

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

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mc/ljm

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