

Department of Legislative Services
 Maryland General Assembly
 2013 Session

FISCAL AND POLICY NOTE

House Bill 805 (Delegate Hubbard)
 Health and Government Operations

Health Occupations - Board of Professional Counselors and Therapists - Denial of Applications

This bill establishes procedures and timelines by which the State Board of Professional Counselors and Therapists must review and render a decision to issue or deny an application for licensure or certification. The board must provide applicants with certain notices and, for applicants denied a license or certificate, inform them of their right to request reconsideration and seek an appeal.

Fiscal Summary

State Effect: Special fund revenues for the board increase by \$15,000 in FY 2014 and \$20,000 in FY 2015 from a new fee on applicants who wish to file an appeal. Special fund expenditures increase by \$268,600 in FY 2014 and \$353,700 in FY 2015, to hire one full-time office secretary to assist with reviewing and processing applications according to the timeframes established in the bill and one part-time (50%) assistant Attorney General to handle appeals under the bill. Future years reflect annualization and inflation and assume a consistent number of appeals.

(in dollars)	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018
SF Revenue	\$15,000	\$20,000	\$20,000	\$20,000	\$20,000
SF Expenditure	\$268,600	\$353,700	\$360,900	\$368,400	\$376,200
Net Effect	(\$253,600)	(\$333,700)	(\$340,900)	(\$348,400)	(\$356,200)

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

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: The board must include, on an application for a license or certificate, a checklist of each item required to be submitted to the board by an applicant. Within 10 business days after the date of receipt of an application, the board must review the application and notify the applicant of any required items from the checklist that the applicant failed to submit. An applicant must have 30 business days after receipt of notice of any missing items to complete an application. An applicant may request additional time to complete the application if the applicant submits to the board documentation of a timely request to a third party for the required information.

Except for denial of a license or certificate on the grounds of a disciplinary violation, within 30 business days after receipt of a complete application, the board must render a decision to issue or deny a license or certificate to an applicant. If the board does not issue a license or certificate to an applicant, the board must notify the applicant by certified mail within five business days after the date of the denial. The notice must include the reason for the denial and (1) if this is the first denial by the board, the applicant's right to request reconsideration of the application or to appeal the denial without a request for reconsideration, including the procedures and any fees for an appeal or (2) if this is a denial following reconsideration, the applicant's right to appeal the denial, including the procedures and any fees for an appeal.

Within 10 business days after receipt of a notice of denial, an applicant may request that the board reconsider the denial. The board must assign an individual other than the individual who initially reviewed the application to review a reconsideration of an application. The board must render a decision on the reconsideration within five business days after the date of receipt of the request. If the board does not issue a license or certificate to an applicant after reconsideration of the application, the board must notify the applicant by certified mail within five business days after the date of the denial. If the board approves the issuance of a license or certificate after reconsideration of an application, the board must issue the license or certificate within five business days after the date of approval.

If the board denies an application after reconsideration of the application, an applicant may appeal the decision to the board within five business days after receipt of notice from the board that the application has been denied. The board may require a reasonable fee for an applicant to file an appeal. The board must hold a hearing within five business days of receipt of a notice of appeal and any required fee. The board must render a final decision within 10 business days after the date of the hearing. Any person aggrieved by a final decision of the board with respect to approval of an application may appeal the decision to the Board of Review and then take any further appeal allowed under the Administrative Procedure Act's contested cases provisions.

Current Law: The State Board of Professional Counselors and Therapists licenses and certifies professional counselors, alcohol and drug counselors, marriage and family therapists, and art therapists. In fiscal 2012, the board regulated a total of 5,192 individuals, issuing 1,160 initial licenses and 565 initial certificates. These figures include new applicants, reinstated licenses and certificates, and individuals upgrading from one level to another level of licensure or certification. The board renewed licenses and certificates for 1,680 individuals.

The board must issue a license or certificate to any applicant who meets the requirements of Title 17 of the Health Occupations Article. Subject to hearing provisions, the board may *deny a license or certificate to any applicant*, place any licensee or certificate holder on probation, reprimand any licensee or certificate holder, or suspend or revoke a license or certificate if the applicant, licensee, or certificate holder violates any 1 of 18 grounds for disciplinary action specified under § 17-509 of the Health Occupations Article. These grounds include fraudulently or deceptively obtaining or attempting to obtain a license or certificate, being convicted of or pleading guilty or *nolo contendere* to a felony or crime involving moral turpitude, and being disciplined by a licensing or disciplinary authority of any other state or country or convicted or disciplined by a court of any state or country for an act that would be grounds for disciplinary action under the board's disciplinary statutes.

Before the board may take any disciplinary action, *including denial of an application for a license or certificate*, it must give the applicant an opportunity for a hearing before the board. The board must give notice and hold the hearing in accordance with the Administrative Procedure Act regarding contested cases. Notice of the hearing must be served personally or by registered mail at least 30 days before the hearing. The applicant may be represented at the hearing by counsel.

Any person aggrieved by a final decision of the board with respect to a disciplinary action, *including denial of a license or certificate*, may not appeal to the Board of Review but may take a direct judicial appeal as provided in the Administrative Procedure Act. An order of the board may not be stayed pending judicial review. The board may appeal any decision that reverses or modifies its order.

Background: According to the board, each application for licensure or certification includes a checklist of the required information that must be submitted to ensure a complete application. If the board receives an incomplete application, the board sends a letter to the applicant indicating what is missing and needs to be submitted to the board. An incomplete application remains open for 180 days. The board may extend this timeframe under certain situations such as the applicant is awaiting information from a third party. Applications are processed within 30 to 90 days (typically 30 to 45 days).

If an application is complete, but the individual does not meet all of the specific qualifications for licensure or certification as specified under statute, the board may determine the individual to be *ineligible* for licensure or certification at that time. According to the board, of the 708 applications processed from new applicants in fiscal 2012, 88 individuals were determined ineligible for licensure or certification. If an applicant is determined to be ineligible, the board sends the applicant a letter indicating what needs to be done and the reason the applicant has been determined ineligible. Such an applicant is encouraged to reapply at a later date. If determined to be ineligible, an applicant can write to the board, provide additional information, and the board will reconsider the applicant's eligibility status. Alternatively, an applicant can file for judicial review in circuit court.

The board may only *deny* an application for licensure or certification if the individual is *eligible* for licensure but there is a disciplinary violation. To deny an application, the board must take formal disciplinary action against an applicant (typically on grounds such as fraudulently attempting to obtain a license, having been disciplined in another state, or having a criminal conviction). In 2012, the board denied five applications, including three applications for reinstatement and two applications for an initial license or certificate.

State Fiscal Effect: Special fund expenditures for the State Board of Professional Counselors and Therapists increase by \$268,639 in fiscal 2014, which accounts for the bill's October 1, 2013 effective date. This estimate reflects the cost of hiring one office secretary to review and process applications within the timeframes established by the bill and one part-time (50%) assistant Attorney General to handle additional appeals anticipated under the bill. It includes salaries, fringe benefits, one-time start-up costs, ongoing operating expenses, and the cost to the board to have cases heard by the Office of Administrative Hearings (OAH). The information and assumptions used in calculating the estimate are stated below:

- the board has a total of seven full-time staff, including three dedicated to licensing and certification, and these existing staff are not sufficient to review and process licensure and certification applications within the timeframes imposed by the bill;
- the board anticipates that it will receive approximately 40 appeals annually under the bill (from about one-half of the individuals who were determined ineligible for licensure or certification) – or 30 appeals in fiscal 2014, reflecting the bill's October 1, 2013 effective date;
- the board does not have a full-time assistant Attorney General at this time and would need at least a 50% position to handle 40 appeals annually; and

- according to the board, these appeals would have to be conducted through OAH, which charges the board a fee per case of \$6,165 (a total of \$246,600 annually for 40 cases, or \$184,950 for 30 cases in fiscal 2014).

	<u>FY 2014</u>	<u>FY 2015</u>
Positions (Full-time equivalent)	1.5	-
Salaries and Fringe Benefits	\$71,077	\$98,889
Hearings by OAH	184,950	249,066
One-time Start-up Costs	8,365	-
Ongoing Operating Expenses	<u>4,247</u>	<u>5,720</u>
Total State Expenditures	\$268,639	\$353,675

Future year expenditures reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses and assume a consistent number of appeals.

To offset these expenditures, special fund revenues for the board will increase by an estimated \$15,000 in fiscal 2014 from fees paid by applicants seeking an appeal. The bill authorizes the board to charge a reasonable fee for an applicant to file an appeal. Given that board costs per hearing are set by OAH and would be at least \$6,165, the board indicates that it would charge a fee of \$500 per appeal. In fiscal 2014, 30 appeals are anticipated. Beginning in fiscal 2015, 40 appeals are anticipated annually.

To the extent that the number of applications or appeals is significantly reduced, board expenditures and revenues could be reduced.

Additional Comments: The Department of Legislative Services advises that the significant additional costs under the bill cannot be accommodated within the board's current revenue stream. The board is already spending down its fund balance and, even absent the bill, will need to increase licensure and certification fees to cover existing expenditures. This bill would further exacerbate the board's structural deficit, necessitating immediate and higher fee increases. Any such impact is not reflected in the estimate.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Health and Mental Hygiene, Judiciary (Administrative Office of the Courts), Office of Administrative Hearings, Department of Legislative Services

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ncs/ljm

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