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FISCAL AND POLICY NOTE
Revised

House Bill 806

(Delegate Hubbard)

Health and Government Operations

Education, Health, and Environmental Affairs

Health Occupations - State Board of Social Work Examiners - Revisions

This bill makes multiple revisions to the Maryland Social Work Practice Act, including requiring applicants for a license from the State Board of Social Work Examiners to submit to a criminal history records check (CHRC) and, if required by the board, a mental or physical competency examination and enhancing civil and criminal penalties for violating the Act.

Fiscal Summary

State Effect: Minimal reduction in special fund expenditures for the State Board of Social Work Examiners beginning in FY 2014 due to reduced printing and postage costs. Any additional expenditures and workload imposed by the bill can be absorbed within existing budgeted resources. The alteration of existing civil and criminal penalty provisions under this bill does not have a material impact on State revenues or expenditures.

Local Effect: The alteration of criminal penalty provisions under this bill does not have a material impact on local finances or operations.

Small Business Effect: Minimal.

Analysis

Bill Summary:

Criminal History Records Check: During the process of submitting information to the Central Repository for a CHRC, if an applicant has made two or more attempts at

securing legible fingerprints, the board may accept an alternate method of CHRC as permitted by the director of the Central Repository and the director of the Federal Bureau of Investigation (FBI). The subject of a CHRC may contest the contents of the statement issued by the Central Repository.

In using information obtained from the Central Repository to determine whether to issue a license, the board must consider:

- the age at which the crime was committed;
- the circumstances surrounding the crime;
- the length of time that has passed since the crime was committed;
- subsequent work history;
- employment and character references; and
- other evidence that demonstrates whether the applicant poses a threat to public health or safety.

Competency Examination: The board may require a mental or physical examination by a health care practitioner if the board believes the applicant may cause harm to the applicant or another person. The board must make a written request for the competency examination and provide the applicant with a list of three health care practitioners from which the applicant may choose to conduct the examination. An applicant required to submit to an examination must be deemed to have consented to the examination and waived any claim or privilege as to the examination report. The board must pay the cost of the examination. The refusal of an applicant to submit to the examination is *prima facie* evidence of the applicant's inability to practice social work competently, unless the board finds that the refusal was beyond the control of the applicant.

Disciplinary Grounds: The bill alters several of the grounds for disciplinary action by the board, including (1) specifying that an individual must be mentally or physically incompetent *to practice social work*; (2) repealing the ground of knowingly violating any provision of the Maryland Social Work Practice Act; (3) expanding the applicability of existing grounds by repealing the requirement that an individual must *knowingly* make or file a false report, fail to file or record any report required by law, fail to report suspected child abuse, or fail to report suspected abuse of a vulnerable adult; (4) adding *neglect* to the required reporting of suspected child abuse; and (5) adding a new ground of failing to comply with required maintenance, disclosure, and destruction of medical records.

Enhanced Civil and Criminal Penalties: The current criminal misdemeanor penalties for a violation of the Maryland Social Work Practice Act are enhanced. A violator is subject to a fine of up to \$5,000 and/or imprisonment for up to two years. The civil fine the

board may impose on a licensee if the board finds there are grounds for disciplinary action is also increased from a maximum of \$5,000 to a maximum of \$10,000.

Electronic Licensing: The bill requires the board, rather than to *issue* a license to any applicant who meets licensure requirements, to instead *maintain on its website a roster* of all licensees who meet licensure requirements. The board must include on each electronic license (1) the kind of license; (2) the full name of the licensee; (3) a license number; (4) the license status; (5) the expiration date; and (6) the original date of issuance. A license is no longer required to include the signatures of the chairman and the secretary of the board or the seal of the board. The board is not required to issue replacement licenses.

License Renewal, Nonrenewed Status, and Reactivation: The bill specifies that the board must, at least one month before a license expires, send a renewal notice to the licensee *at the last known electronic or physical address of the licensee* rather than by first-class mail. The bill also establishes a nonrenewed license status. The board must place a licensee on nonrenewed status for a maximum of five years if the licensee does not renew and submits to the board a written application for nonrenewed status and pays the applicable fee. The board must provide a licensee who applies for nonrenewed status written notification of specified dates and information. Rather than issue a license to an individual on inactive status, the board must *reactivate* the license if the individual applies for reactivation, pays the reactivation fee, and meets other specified requirements.

Board Membership: Board membership currently must include one licensed social work associate (LSWA), one licensed graduate social worker (LGSW), one licensed certified social worker (LCSW), and four licensed certified social workers-clinical (LCSW-C). The bill specifies if a specific licensee of the required license level is not appointed to a vacancy on the board within three months, a licensee of any license level must be appointed immediately. The bill authorizes any person who provides a statement of nomination signed by 15 social workers licensed in the State or the corporate executive officers or executive directors of private organizations where social workers are employed to submit to the Governor a list of nominees for appointment to the board. The board is required to elect a chair, vice chair, and secretary-treasurer from among its members every two years.

Exemptions from Licensure Requirement: The bill exempts a student while pursuing a supervised course of study in a social work program that is accredited or is a candidate for accreditation by the Council on Social Work Education (CSWE) from the requirement to be licensed to practice social work in the State.

Accreditation of Social Work Programs: The bill specifies that, to obtain a bachelor social worker license or an LGSW license, an individual must have a specified degree from a program *that is accredited or is a candidate for accreditation* by CSWE. The
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board may not renew a bachelor social worker license or an LGSW license of a licensee who holds a baccalaureate or master's degree from a program that was a candidate for accreditation but was denied accreditation.

Practice of Social Work: The bill specifies that the practice of social work does not include formulating diagnostic impressions. The practice of graduate social work and the practice of social work by an LCSW include formulating a diagnosis, under the direct supervision of an LCSW-C, and the treatment of *biopsychosocial* rather than psychosocial conditions. The definition of "psychotherapy" is altered to mean the *assessment* and treatment of mental disorders and behavioral disturbances.

Associate Social Work License: The bill renames the social work associate license the *bachelor* social worker license (LBSW) and prohibits an LBSW from engaging in private practice. (This change is also reflected in the membership of the board.)

Graduate Social Worker License: The bill repeals the three-year provisional graduate social worker license and instead allows a graduate social worker to obtain a regular two-year LGSW license until the social work program the licensee attended gains accredited status from CSWE. An LGSW is prohibited from diagnosing a mental disorder or engaging in private practice without being under the direct supervision of an LCSW-C.

Certified Social Worker License: To obtain an LCSW license, an applicant must have certain supervised experience, of which a minimum of *100* (rather than 144) hours must be periodic face-to-face supervision. An LCSW is prohibited from diagnosing a mental disorder without being under the direct supervision of an LCSW-C.

Certified Social Worker-Clinical License: To obtain an LCSW-C license, an applicant must have received a master's degree in social work and have documentation of *completion of 12 academic credits* in clinical course work from an accredited program. At least 6 of the 12 credits must be obtained in a master's degree program. The applicant must also have 3,000 hours of supervised experience, *of which 1,500 hours are face-to-face client contact*. The bill repeals the authority of the board to waive the supervision requirement for applicants for an LCSW-C license. An LCSW-C may evaluate, diagnose, and treat *biopsychosocial* rather than psychosocial conditions. The bill also clarifies that an LCSW-C may petition for an emergency evaluation of an individual with a mental disorder.

Current Law: The board issues four levels of licenses: LSWA, LGSW, LCSW, and LCSW-C. As shown in **Appendix 1**, under current law each level of licensure requires different educational, experience, and supervision requirements, and each level has a different scope of practice. Licensure requires a minimum educational attainment of a

master's degree, with the exception of an LSWA, which requires only a bachelor's degree. Neither an LSWA nor an LGSW may practice unsupervised. The "highest" level of licensure – LCSW-C – is the only level of social work licensure with a scope of practice that includes the diagnosis of psychosocial and mental conditions.

Competency Requirements: The board, along with eight other health occupations boards (Acupuncture; Audiologists, Hearing Aid Dispensers, and Speech-Language Pathologists; Morticians and Funeral Directors; Nursing; Optometry; Pharmacy; Podiatric; and Psychologists) may require a licensee to submit to a competency examination *while investigating an allegation against a licensee* if the board has reason to believe that the licensee may cause harm to a person. Only three boards (Physicians, Morticians and Funeral Directors, and Veterinary Medical Examiners) are additionally authorized to require an applicant for licensure to submit to a competency examination.

Petitions for Emergency Evaluation: A petition for emergency evaluation of an individual may be made only if the petitioner has reason to believe that the individual has a mental disorder and presents a danger to the life or safety of the individual or of others. A petition for emergency evaluation may be made by a number of health care practitioners, including clinical social workers.

Renewal Notices: Each health occupations board in Maryland is required to send renewal notices prior to the expiration of a license or certificate. Four boards (Nursing, Pharmacy, Physical Therapy Examiners, and Environmental Health Specialists) are explicitly authorized to send renewal notices by electronic means.

Graduate Social Worker License: The board may issue a provisional graduate social worker license to an individual who has received a master's degree from a social work program that had received formal candidacy status from CSWE or an equivalent organization at the time the degree was awarded. A provisional license is issued for up to three years or until the program has attained accredited status from CSWE, at which time individuals with a provisional license can apply for an LGSW license.

Background: The State Board of Social Work Examiners regulates the practice of social work in Maryland. The purpose of the board is to protect and promote public safety through the licensing and regulation of social workers. Currently, there are a total of 12,881 licensed social workers in Maryland: 700 LSWAs, 3,613 LGSWs, 371 LCSWs, and 8,197 LCSW-Cs.

Electronic Licensing: According to the board, the social work licensing database is currently linked with the board's website and licenses can already be verified online. However, current statute requires issuance of paper licenses and the provision of renewal notices via first-class mail. Effective April 1, 2007, the State Board of Nursing discontinued printing all license and certification cards. When a licensee or certificate

holder renews, a written notice of renewal along with directions on how to verify the license online or by using the automated phone verification system is mailed. This change occurred to help eliminate fraud and “impostors,” eliminate the need to reissue lost or stolen licenses and certificates, and provide the most current information regarding licensure and certification status.

Criminal History Records Checks: As shown in **Exhibit 1**, five health occupations boards require CHRCs – all but one upon initial application only, while the State Board of Nursing also requires subsequent CHRCs at least once every 12 years upon renewal. With the exception of registered pharmacy technicians, both a State and federal check are required for all noted professions.

Exhibit 1
Health Occupations Required to Obtain Criminal History Records Checks

<u>Board</u>	<u>Occupation(s)</u>
Morticians and Funeral Directors	Mortuary Transport Service Providers ¹
Nursing	Registered Nurses ² Licensed Practical Nurses ² Certified Nursing Assistants ² Electrologists ²
Pharmacy	Registered Pharmacy Technicians ³ Wholesale Pharmaceutical Distributors
Examiners of Psychologists	Licensed Psychologists
Residential Child Care Professionals	Program Administrators Residential Child and Youth Care Practitioners ⁴

¹ Certification began in 2013.

² Subsequent criminal history records checks are required upon renewal at least once every 12 years.

³ State-only check required.

⁴ Certification is not required until October 1, 2015.

Source: Department of Legislative Services

State Fiscal Effect: Special fund expenditures decrease by a minimal amount beginning in fiscal 2014 from reduced printing and postage costs as the board will no longer be required to print and mail paper licenses and is authorized to send renewal notices via

electronic mail. Any additional workload and/or expenditures can be handled within existing budgeted resources as discussed below.

- The board will receive CHRC results for approximately 1,600 applicants annually and estimates that approximately 50 positive results (a criminal history is identified) will require follow-up, which can be handled by existing staff.
- The board currently has the authority to require a mental or physical competency examination for licensees under investigation and has required two such examinations in the past six years at a cost of between \$1,000 and \$1,800 per examination. Given the small number of examinations anticipated, any additional expenditures can be absorbed within existing budgeted resources.

The bill may result in a minimal increase in general fund revenues as a result of increasing the board's maximum civil fine from \$5,000 to \$10,000. As the board collects approximately \$5,000 to \$7,000 annually, primarily from individuals who practice on an expired license, any additional revenues are anticipated to be minimal.

Additional Comments: Each individual subject to a CHRC under the bill will be required to pay \$54.50 for a State and national CHRC including a \$20 fingerprinting fee, a \$16.50 FBI fee, an \$18 fee to the Criminal Justice Information System (CJIS) Central Repository in the Department of Public Safety and Correctional Services. CJIS collects, manages, and disseminates Maryland Criminal History Record Information for criminal justice and noncriminal justice (*e.g.*, employment and licensing) purposes.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Health and Mental Hygiene, Department of Legislative Services

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Appendix 1 – Four Levels of Licensure

<u>Level of Licensure</u>	<u>Educational Requirements</u>	<u>Experience Required for Licensure</u>	<u>Scope of Practice and Supervision Requirements</u>
Licensed Social Work Associate (LSWA)	Bachelor in Social Work		May perform nonclinical social work under the supervision of an LCSW, LCSW-C, or LGSW who meets certain conditions.
Licensed Graduate Social Worker (LGSW)	Master in Social Work		May perform social work under the supervision of an LCSW, LCSW-C or LGSW who meets certain conditions for nonclinical social work, treatment of psychosocial conditions and mental disorders, and provision of psychotherapy.
Licensed Certified Social Worker (LCSW)	Master in Social Work*	≥ 3,000 hours postgraduate experience, supervised by an LCSW-C.	May perform unsupervised nonclinical social work and treatment of psychosocial conditions and mental disorders and psychotherapy under the supervision of an LCSW-C.
Licensed Certified Social Worker-Clinical (LCSW-C)	Master in Social Work*	≥ 3,000 hours postgraduate clinical experience, supervised by an LCSW-C, of which 50% must be face-to-face; must be a part of an employment contract.	May perform nonclinical social work; evaluation, diagnosis, and treatment of psychosocial conditions and mental disorders; and psychotherapy. No supervision required.

*Some licenses may also have a doctorate; however, a master of social work degree is required.

Source: Laws of Maryland