

Department of Legislative Services
Maryland General Assembly
2018 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 288 (Delegate Morhaim)
Health and Government Operations

Health Occupations - Power of Secretary of Health - Boards and Commissions

This bill authorizes the Secretary of Health to vacate or modify to reduce the severity of any decision or determination made by a board or commission under the Health Occupations Article regarding disciplinary action against an individual licensed or certified by the board or commission.

Fiscal Summary

State Effect: General and/or special fund revenues may decrease by an indeterminate amount beginning in FY 2019, as discussed below. Expenditures are likely not materially affected.

Local Effect: None.

Small Business Effect: Potential meaningful.

Analysis

Current Law: Under the Health-General Article, the Secretary of Health has the authority and powers specifically granted to the Secretary over the units in the Maryland Department of Health (MDH). The Health Occupations Article establishes that the Secretary's power over plans, proposals, and projects of units in MDH *does not* include the power to disapprove or modify any decision or determination that a board or commission makes under authority specifically delegated by law to the board or commission.

Exhibit 1 lists the health occupations boards within MDH.

Exhibit 1
Health Occupations Boards in the Maryland Department of Health

Acupuncture
Audiologists, Hearing Aid Dispensers, and Speech-Language Pathologists
Chiropractic
Dental
Dietetic Practice
Environmental Health Specialists
Massage Therapy
Morticians and Funeral Directors
Nursing
Nursing Home Administrators
Occupational Therapy
Optometry
Pharmacy
Physical Therapy
Physicians
Podiatry
Professional Counselors and Therapists
Psychologists
Residential Child Care Program Professionals
Social Work

Source: Department of Legislative Services

Chapters 613 and 614 of 2017 require the Secretary of each principal department to supervise each unit of State government within the Secretary's jurisdiction that is composed, in whole or in part, of individuals participating in the occupation or profession regulated by the unit in order to (1) prevent unreasonable anticompetitive actions by the unit and (2) determine whether the decisions and actions of the unit further a clearly articulated State policy to displace competition in the regulated market.

The Office of Administrative Hearings (OAH) must review a decision or action of a board or commission within MDH that is referred to the office in order to determine whether the decision or action furthers the specified State policy and may not approve a decision or action that does not do so. However, Chapters 613 and 614 *do not* require OAH to review (1) a decision or determination of a board or commission concerning ministerial acts; (2) internal operations of a board or commission; (3) investigations; (4) charges; or

(5) consent orders and letters of surrender related to an individual regulated by a board or commission.

State Revenues: Most health occupations boards (at least 10) are authorized to assess civil fines against licensees as a form of disciplinary action for specified violations, particularly for unauthorized practice or misrepresentation; maximum fines can reach up to \$50,000. Depending on the particular board and violation, fines are either remitted to the general fund or the board's special fund. For example, the State Board of Physicians (MBP) may impose a civil fine in lieu of license suspension or in addition to a reprimand, license suspension, or revocation; such fines are remitted to the general fund. MBP may also assess a civil fine for the unauthorized practice of medicine or misrepresentation; such fines are retained by MBP.

The bill authorizes the Secretary of Health to vacate or reduce the severity of a board's disciplinary action against a licensee. Thus, general and/or special fund revenues may decrease by an indeterminate amount beginning in fiscal 2019. The extent and timing of any such decrease cannot be reliably estimated at this time as it depends on the discretion of the Secretary of Health and the frequency and severity of imposed fines, which varies for each health occupations board. For example, in calendar 2017, MBP issued 51 disciplinary orders that included civil fines ranging from \$250 to \$25,000.

Small Business Effect: Potential meaningful for licensees or certificate holders of health occupations boards who may have disciplinary actions vacated or reduced by the Secretary of Health (including potential fines and license suspensions or revocations) that would otherwise adversely affect licensees' business establishments or their ability to practice.

Additional Comments: The Department of Legislative Services notes that the bill does not establish a specific process by which the Secretary of Health receives an order of disciplinary action for consideration. Therefore, it is unclear how or when such a request for consideration must be made (*i.e.*, whether such a request must be made after all other administrative appeals are exhausted).

Additional Information

Prior Introductions: HB 427 of 2008, a similar bill, was withdrawn.

Cross File: None.

Information Source(s): Maryland Department of Health; Office of Administrative Hearings; Department of Legislative Services

Fiscal Note History: First Reader - January 30, 2018
nb/jc

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