

**M00B0104**  
**Health Professional Boards and Commissions**  
Maryland Department of Health

***Operating Budget Data***

(\$ in Thousands)

	<u>FY 17</u> <u>Actual</u>	<u>FY 18</u> <u>Working</u>	<u>FY 19</u> <u>Allowance</u>	<u>FY 18-19</u> <u>Change</u>	<u>% Change</u> <u>Prior Year</u>
General Fund	\$481	\$495	\$500	\$5	1.0%
Adjustments	0	-4	5	8	
<b>Adjusted General Fund</b>	<b>\$481</b>	<b>\$491</b>	<b>\$505</b>	<b>\$14</b>	<b>2.7%</b>
Special Fund	34,251	37,435	36,760	-675	-1.8%
Adjustments	0	-305	189	494	
<b>Adjusted Special Fund</b>	<b>\$34,251</b>	<b>\$37,130</b>	<b>\$36,948</b>	<b>-\$182</b>	<b>-0.5%</b>
Reimbursable Fund	516	630	631	1	0.2%
Adjustments	0	0	2	2	
<b>Adjusted Reimbursable Fund</b>	<b>\$516</b>	<b>\$630</b>	<b>\$632</b>	<b>\$3</b>	<b>0.4%</b>
<b>Adjusted Grand Total</b>	<b>\$35,248</b>	<b>\$38,250</b>	<b>\$38,085</b>	<b>-\$165</b>	<b>-0.4%</b>

Note: FY 18 Working includes targeted reversions, deficiencies, and across-the-board reductions. FY 19 Allowance includes contingent reductions and cost-of-living adjustments.

- After adjusting for across-the-board actions, the Governor’s proposed allowance for the Health Professional Boards and Commissions decreases by approximately \$165,000 below the fiscal 2018 working appropriation.

Note: Numbers may not sum to total due to rounding.

For further information contact: Jordan D. More

Phone: (410) 946-5530

## ***Personnel Data***

	<b><u>FY 17 Actual</u></b>	<b><u>FY 18 Working</u></b>	<b><u>FY 19 Allowance</u></b>	<b><u>FY 18-19 Change</u></b>
Regular Positions	276.60	271.60	271.60	0.00
Contractual FTEs	<u>29.78</u>	<u>49.71</u>	<u>40.54</u>	<u>-9.17</u>
<b>Total Personnel</b>	<b>306.38</b>	<b>321.31</b>	<b>312.14</b>	<b>-9.17</b>

### ***Vacancy Data: Regular Positions***

Turnover and Necessary Vacancies, Excluding New Positions	13.58	5.00%
Positions and Percentage Vacant as of 12/31/17	24.50	9.02%

- The fiscal 2019 allowance includes no new regular positions compared to the fiscal 2018 working appropriation.
- However, due to actions taken by the Maryland Department of Health (MDH) in fiscal 2018, the boards lost 5 regular full-time equivalents (FTE) from the most recent actual.
- Contractual FTEs are down by 9.2 mainly as a result of the Maryland Medical Cannabis Commission reducing the number of contractual FTEs due to the conversion of these FTEs to regular positions within the fiscal 2018 working appropriation.
- Expected turnover for the boards and commissions is maintained at 5%, which will require the boards to maintain an average of 13.6 vacancies throughout the year. As of December 31, 2017, there were 24.5 vacancies, or 9%.

## *Analysis in Brief*

---

### Major Trends

***Most Boards Are Able to Meet Processing Goals for Licensees:*** In fiscal 2017, all of the boards with the exception of two (Dental Examiners and Nursing) met their respective goals for processing licenses in a timely manner. The total number of licenses processed in fiscal 2017 ranged from 51,281 for the Board of Nursing to 156 for the State Commission on Kidney Disease.

***Complaint Processing:*** In fiscal 2017, six of the boards were unable to process complaints according to their respective timeframes. Five of these boards (Nursing, Dental, Morticians, Audiologists, and Social Work) were also unable to process complaints within their respective timeframes in fiscal 2016, with particularly sharp declines at the Board of Nursing and the Board of Social Work. **Both of these boards should comment on the factors related to the declining rate of completed investigations.**

### Issues

***Sunset Review for the Board of Professional Counselors and Therapists:*** During the 2017 interim, the Department of Legislative Services (DLS) completed a full sunset evaluation of the Board of Professional Counselors and Therapists. In the report, DLS made 32 recommendations, including that emergency legislation should be enacted to reflect the statutory recommendations contained in the report and to extend the termination date of the board to July 1, 2021. Among the recommendations were that the board should hire additional personnel to resolve a large backlog of complaints as well as to allow the board to provide sufficient administrative support to the Alcohol and Drug Subcommittee that the report recommended. **MDH, as well as the board, should comment on their efforts to secure the personnel recommended within the report.**

***Integrated Board Licensure System Moves Forward:*** The Department of Information Technology is leading an effort, along with the Board of Nursing, to secure a new enterprise licensure and complaint software system for the Board of Nursing as well as at least five other health boards that have yet to be identified. This project is a continuation of the Board of Physicians project from previous years. However, the Board of Physicians is no longer the lead board since they no longer feel that they have a pressing need for a brand new software system. This could potentially pose a problem for the project since the Board of Nursing, which will now also be the main financing source for the project, does not have the same level of fund balance available as the Board of Physicians. **The department should comment on which other boards are joining in this project, why only some boards are going to be involved if this is truly going to be an enterprise project, and on the availability of financing for this project, including whether or not funds from other participating boards may be used to finance the enterprise information technology system.**

## **Operating Budget Recommended Actions**

1. Concur with Governor's allowance.

## **Updates**

***Maryland Medical Cannabis Commission:*** The Natalie M. LaPrade Medical Cannabis Commission, also known as the Maryland Medical Cannabis Commission, has been under intense scrutiny over the licensure process that was mostly completed in calendar 2017. In particular, there have been numerous concerns around whether the commission acted appropriately when they did not consider racial and ethnic diversity as part of the grower, processor, and dispensary licensure process. Numerous pieces of legislation attempted to address these concerns, but none were passed at the 2017 session. As of February 7, 2018, the commission has issued final licenses for 14 growers, 12 processors, and 30 dispensaries, and medical cannabis has now been available to patients since December 2017.

**M00B0104**  
**Health Professional Boards and Commissions**  
**Maryland Department of Health**

## ***Operating Budget Analysis***

---

Within the Maryland Department of Health (MDH), there are 22 boards (including two commissions) that regulate health professionals. These boards license and certify health professionals, resolve consumer complaints, and assist in establishing parameters for each profession through regulation. Almost all of the boards and commissions are funded through fees assessed on licensees, with the exception of the State Board of Examiners of Nursing Home Administrators and the State Board of Residential Child Care Administrators, which receive general funds.

In general, each board has the following goals to:

- protect the public by ensuring that practicing health professionals are properly credentialed and licensed to provide high-quality services to the citizens of Maryland; and
- receive, investigate, and resolve complaints in a timely manner.

### **Performance Analysis: Managing for Results**

#### **1. Most Boards Are Able to Meet Processing Goals for Licensees**

The first goal of the boards is to protect the public by ensuring that licensees are properly credentialed. Each board has different procedures for issuing initial and renewal licenses. Some renew every two years, while others stagger renewals so that they are completed at a continual pace throughout the year. **Exhibit 1** shows the number of initial and renewal licenses processed by each board in fiscal 2016 and 2017. The total number of licenses issued in fiscal 2017 range from 51,281 for the Board of Nursing to 156 for the State Commission on Kidney Disease.

In previous years, the boards have generally aimed to process 100% of new licenses within 10 days of receipt of a complete application and to process 100% of licensure renewals within 5 days. However, for the past two years, those goals have been lowered to 95% for both initial licenses and renewals. In fiscal 2017, the State Board of Dental Examiners failed to complete both goals, falling short for the issuance of initial licenses (84%) and for the issuance of renewals (62%). The other board to fall short of the goal was the Board of Nursing, which fell short for the renewal of licenses for both registered nurses (80%) and for licensed practical nurses (76%).

**Exhibit 1**  
**Licenses Processed**  
**Fiscal 2016-2017**

<u>Board/Commission</u>	<u>2016</u>	<u>2017</u>
Nurses*	51,506	51,281
Physicians*	19,101	28,030
Pharmacy*	15,873	11,897
Professional Counselors and Therapists*	4,311	7,413
Social Work*	6,658	7,281
Dental Examiners*	4,853	5,212
Chiropractic and Massage Therapy Examiners*	1,332	4,875
Physical Therapy Examiners*	4,360	4,483
AUD/HAD/SLP*	2,654	2,461
Occupational Therapists	4,162	2,263
Psychologists*	1,562	1,554
Morticians*	633	1,296
Dietetic Practice*	915	957
Acupuncture*	555	562
Environmental Health Specialists*	62	495
Podiatric	518	478
Optometry*	555	435
Residential Child Care Program Professionals	929	333
Nursing Home Administrators	264	245
Kidney Disease	131	156

AUD/HAD/SLP: Audiology, Hearing Aid Dispensers, Speech-Language Pathologists

\*Boards with a biennial renewal cycle.

Source: Maryland Department of Health

---

## **2. Complaint Processing**

The other primary goal of the boards is to protect the public and promote the delivery of quality health care by receiving and resolving complaints lodged against licensees in a timely manner. Of the 22 boards, 6 were unable to process complaints within their respective timeframes, as shown in **Exhibit 2**. The chart shows the total number of complaints, the goals that the boards have for timely

complaint resolution, and the percentage of complaints that were processed according to their goals. Five of these boards (Nursing, Dental, Morticians, Audiologists, and Social Work) fell short in the processing of complaints last year as well, with particularly sharp declines from fiscal 2016 for the Board of Nursing, from 67% to 24%, and the Board of Social Work, from 50% to 34%. **Both of these boards should comment on the factors related to the declining rate of completed investigations.**

---

**Exhibit 2**  
**Complaints Not Processed in a Timely Manner**  
**Fiscal 2017**

<u>Board/Commission</u>	<u>Complaints Investigated</u>	<u>Goal</u>	<u>2017</u>
Nursing	1,004	90% in 270 days	24%
Dental	198	100% in 180 days	74%
Morticians	182	100% in 180 days	87%
Audiologists	112	100% in 180 days	96%
Social Work	87	100% in 180 days	34%
Counselors and Therapists	60	100% in 180 days	50%

Source: Maryland Department of Health

---

## **Fiscal 2018 Actions**

### **Cost Containment**

On September 6, 2017, the Board of Public Works reduced general funds across various departments. One of the reductions within MDH was to reduce travel costs by 25% across the department. The share of this reduction taken from the Health Professional Boards and Commissions (HPBC) was \$3,465 in general funds.

### **Across-the-board Employee and Retiree Health Insurance Reduction**

The budget bill includes an across-the-board reduction for employee and retiree health insurance in fiscal 2018 to reflect a surplus balance in the fund. This agency's share of this reduction is \$3,520 in general funds and \$305,157 in special funds.

**Proposed Budget**

As shown in **Exhibit 3**, the adjusted fiscal 2019 allowance for HPBC decreases by approximately \$165,000 net of across-the-board reductions.

**Exhibit 3**  
**Proposed Budget**  
**MDH – Health Professional Boards and Commissions**  
**(\$ in Thousands)**

<b>How Much It Grows:</b>	<b><u>General</u> <u>Fund</u></b>	<b><u>Special</u> <u>Fund</u></b>	<b><u>Reimb.</u> <u>Fund</u></b>	<b><u>Total</u></b>
Fiscal 2017 Actual	\$481	\$34,251	\$516	\$35,248
Fiscal 2018 Working Appropriation	491	37,130	630	38,250
Fiscal 2019 Allowance	<u>505</u>	<u>36,948</u>	<u>632</u>	<u>38,085</u>
Fiscal 2018-2019 Amount Change	\$14	-\$182	\$3	-\$165
Fiscal 2018-2019 Percent Change	2.7%	-0.5%	0.4%	-0.4%
 <b>Where It Goes:</b>				
<b>Personnel Expenses</b>				
Salary adjustments.....				\$467
Health insurance, impact of fiscal 2018 health insurance deduction holidays.....				309
General salary increase.....				195
Retirement contributions.....				46
Social Security contributions.....				19
Turnover adjustments.....				-10
Other fringe benefit adjustments.....				-86
 <b>Board of Nursing</b>				
One-time equipment costs.....				-101
Lower Edge contract.....				-260
 <b>Board of Physicians</b>				
One-time equipment costs.....				-75
Peer review and rehabilitation contract.....				-334
 <b>Board of Pharmacy</b>				
Contractual employees.....				201
New pharmacist rehabilitation contract (per Chapter 102 of 2015).....				200
 <b>Medical Cannabis Commission</b>				
Licensure database.....				310

*M00B0104 – MDH – Health Professional Boards and Commissions*

**Where It Goes:**

New vehicles .....	100
One-time equipment costs .....	-50
Contractual employees .....	-868
<b>Other Changes</b>	
Administrative allocation (all boards) .....	-228
Other .....	-2
<b>Total</b>	<b>-\$165</b>

MDH: Maryland Department of Health

Note: Numbers may not sum to total due to rounding.

---

**Personnel**

Personnel costs within the boards increased by approximately \$941,000 in fiscal 2019. However, two of the larger increase were for the across-the-board actions, including the backfill of the health insurance cost reduction from fiscal 2018 (\$309,000) as well as the general salary increase contained in the fiscal 2019 allowance, which includes funds for a 2% general salary increase for all State employees, effective January 1, 2019. These funds are budgeted in the Department of Budget and Management’s (DBM) statewide program and will be distributed to agencies during the fiscal year. This agency’s share of the general salary increase is \$4,866 in general funds, \$188,616 in special funds, and \$1,726 in reimbursable funds.

Beyond these increases, the largest increase for personnel is in other salary adjustments, mainly the conversion of contractual positions into regular positions within the fiscal 2018 working appropriation for the Natalie M. LaPrade Medical Cannabis Commission, also referred to as the Maryland Medical Cannabis Commission (MMCC). Salaries within MMCC increase by over \$732,000 due to this conversion. The difference between this increase and the total increase of \$467,000 across all of the boards and commissions is due to vacant positions returning to their base salaries.

**Other Changes**

Due to the MMCC contractual conversions, the largest nonpersonnel change for HPBC is a decrease of \$868,000 in costs for contractual employees within MMCC. Once the 10 full-time equivalents (FTE) are converted to regular positions, MMCC will decrease its contractual FTE count in fiscal 2019 by a total of 11 FTEs. Within MMCC, this cost decrease is partially offset by new costs for a licensure database (\$310,000) as well as an allowance for new vehicles (\$100,000).

Other large changes happen within only three other boards. For two of the boards, Nursing and Physicians, the major cost changes are decreases from the working appropriation. For the Board of Nursing, there are large decreases for one-time equipment costs (\$101,000) as well as a large decrease

in the main information technology (IT) contract for the board (\$260,000). For the Board of Physicians, changes are also driven by decreasing contractual expenses, including for a peer review and rehabilitation contract (\$334,000) as well as other one-time IT equipment costs (\$75,000).

In contrast, the Board of Pharmacy has two major cost increases. The first is \$201,000 for contractual employees as the board is expanding its contractual FTEs by 6. These positions, however, have been historically filled but not budgeted for annually, so the increase is just representing the true cost of operating the board. The second large increase is \$200,000 for a new pharmacist rehabilitation contract.

## **Fund Balances**

As previously stated, the majority of the funding for HPBC comes in the form of special funds derived from user fees. In previous reports, MDH has recommended that each of the boards maintain a fund balance level target between 20% and 30% of their most recent expenditures. These levels are necessary since unexpected expenditures, such as legal expenses, can severely limit the ability of the boards to function since, by law, no other State money is available to the boards in the case of an emergency or unanticipated expense. Based upon these recommendations, the Department of Legislative Services (DLS) has analyzed where the projected fund balance of each board is anticipated to be at the end of fiscal 2019, assuming that each board fully expends both their current fiscal 2018 working appropriation as well as fiscal 2019 allowance. The projected fund balances, and the percentage of the balance compared to the fiscal 2019 allowance, are presented in **Exhibit 4**.

---

**Exhibit 4**  
**Health Boards and Commissions Fund Balance Projections**  
**Fiscal 2019**

<b><u>Board</u></b>	<b><u>Allowance</u></b>	<b><u>Projected Ending Balance</u></b>	<b><u>Balance as Percentage of Allowance</u></b>
Acupuncture	\$273,694	\$169,125	61.79%
Dietetic Practice	223,830	124,317	55.54%
Counselors and Therapists	955,592	1,639,154	171.53%
Massage Therapy	699,837	397,782	56.84%
Chiropractic	465,375	44,876	9.64%
Environmental Health Specialists	81,105	20	0.02%
Dental	2,357,684	299,865	12.72%
Morticians	600,591	72,180	12.02%
Cannabis	4,255,447	4,473,505	105.12%
Nursing	8,997,609	1,366,217	15.18%
Occupational	602,131	411,412	68.33%
Optometry	306,368	78,386	25.59%

*M00B0104 – MDH – Health Professional Boards and Commissions*

<u>Board</u>	<u>Allowance</u>	<u>Projected Ending Balance</u>	<u>Balance as Percentage of Allowance</u>
Pharmacy	3,866,631	3,195,827	82.65%
Physical Therapy	1,040,382	786,372	75.58%
Physicians	10,167,150	4,850,238	47.70%
Podiatry	347,119	106,522	30.69%
Psychologists	639,169	499,345	78.12%
Social Work	1,729,604	1,060,788	61.33%
AUD/HAD/SLP	398,867	190,395	47.73%
Kidney Commission	177,592	54,553	30.72%

AUD/HAD/SLP: Audiology, Hearing Aid Dispensers, Speech-Language Pathologists

Source: Maryland Department of Health

---

As shown in the exhibit, five boards are currently projected to end fiscal 2019 with a balance below the 20% target (Chiropractic, Environmental Health Specialists, Dental, Morticians, and Nursing) while only one board is projected to actually be within the 20% to 30% target range (Optometry). All other boards are projected to be well above the 30% target, with both MMCC as well as the Board of Professional Counselors and Therapists with fund balances above 100% of their fiscal 2019 allowance.

## ***Issues***

---

### **1. Sunset Review for the Board of Professional Counselors and Therapists**

Maryland's 20 health occupations boards are subject to periodic evaluation and reestablishment provisions of the Maryland Program Evaluation Act (sunset law). In the 2017 interim, DLS performed a full sunset evaluation of the State Board of Professional Counselors and Therapists. In the evaluation, DLS found that while the board's current interim executive director has initiated efforts to resolve longstanding issues, additional support is needed to address significant deficiencies related to the board's disciplinary, licensure/certification, and other regulatory processes, many of which have troubling implications for the board's ability to fulfill its primary purpose of protecting the public's health and welfare. In total, DLS made 32 recommendations, including that emergency legislation should be enacted to reflect the statutory recommendations contained in the report and to extend the termination date of the board to July 1, 2021. Further, uncodified language should be adopted to require that the board, in consultation with MDH and DBM, submit reports to DLS every six months, with the first report due October 1, 2018, on the progress made implementing the statutory and nonstatutory recommendations contained in the report.

#### **Fiscal and Budgetary Recommendations**

While most of the recommendations were in regard to the makeup of the board and the requirements that the board places upon its licensees, one of the main findings in the report was that the board has developed a large backlog of complaints due to both a lack of appropriate tracking systems as well as a lack of personnel to conduct the investigations required. In the board's response, they stated that they are currently working with MDH to obtain a full-time, regular compliance manager and a full-time, regular investigator. However, neither of these positions are currently proposed in the fiscal 2019 allowance.

The report also recommended that the board hire a short-term contractual administrative officer to allow the board to provide sufficient administrative support to the Alcohol and Drug Subcommittee that the report recommended the board constitute due to delays and other concerns surrounding the licensing and regulation of alcohol and drug counselors in particular. The board, in their response, noted that they are currently attempting to hire this position. However, the fiscal 2019 allowance for contractual employees remains flat. Further, the report noted that the board currently maintains enough special fund revenue to support the additional personnel required and recommended that the board work with MDH to secure the personnel, with which the board concurred. **MDH, as well as the board, should comment on their efforts to secure the personnel recommended within the report.**

### **2. Integrated Board Licensure System Moves Forward**

The MDH – Administration budget includes \$734,500 (all special funds) to support the planning and development by the Department of Information Technology (DoIT) of a new integrated IT system for medical licensure and investigation. Originally, this project was begun as a major IT licensure and

investigation software project for the Board of Physicians only. Development of the project, initially spurred on by a DLS sunset evaluation recommendation in 2011, stalled numerous times over the years. Most recently, a project manager was hired in June 2015, and the board proceeded with developing a formal Request for Proposals (RFP) that it was ready to issue at the beginning of calendar 2017. However, the RFP was held back by DoIT so that the scope could be changed to encompass more boards than just the Board of Physicians.

### **Movement to Enterprise, without the Board of Physicians**

The new administration at DoIT has made it a statewide priority to develop, procure, and implement enterprise systems wherever possible in State government. Enterprise systems are software packages that can be used by multiple entities that administer similar functions. In this particular situation, since the State has multiple health professional boards that all conduct similar licensing and complaint investigations functions, it makes sense that they all operate with a similar licensing and investigation software package. According to DoIT, moving to an enterprise IT system will optimize the State's portfolio of services and investments, enable better decision making, create faster delivery of IT solutions through a shared solutions approach, promote a highly collaborative culture, and ensure alignment of IT projects and initiatives with the State IT Master Plan.

With these goals in mind, DoIT has begun outreach to the various other health professional boards in order to solicit interest and determine need before moving forward. However, after months of planning and deliberations, the Board of Physicians has decided, as of the second quarter of fiscal 2018, that it no longer needs a new software solution. In DoIT's mid-year report on the project, it notes that the Board of Physicians no longer feels the need to be the lead agency on the project since the board determined that the immediate need for the project is no longer pressing. However, the project is moving forward, with funding in fiscal 2019 slated to come from the Board of Nursing, which will now be the lead board for the new project moving forward. The mid-year report from DoIT also notes that this project will include at least five other boards, but it does not identify them.

One potential problem for moving the lead agency from the Board of Physicians to the Board of Nursing is that the Board of Nursing does not have nearly the same size fund balance as the Board of Physicians from which a project of this magnitude could be financed. As presented in **Appendix 3**, future funding estimates for this project are projected to be over \$1.1 million during fiscal 2020 through 2022, which would take up almost all of the currently available fund balance of the Board of Nursing. Further, since the project is still in the planning phase, it is unclear what the true cost of the project may end up being. **The department should comment on which other boards are joining in this project, why only some boards are going to be involved if this is truly going to be an enterprise project, and on the availability of financing for this project, including whether or not funds from other participating boards may be used to finance the enterprise IT system.**

## ***Operating Budget Recommended Actions***

---

1. Concur with Governor's allowance.

## ***Updates***

---

### **1. Maryland Medical Cannabis Commission**

MMCC is responsible for the implementation of programs to make medical cannabis available to qualifying patients in a safe and effective manner. The commission oversees licensing, registration, inspection, and testing related to the State’s medical cannabis program and provides relevant program information to patients, physicians, growers, dispensers, processors, testing laboratories, and caregivers.

Chapter 251 of 2015 authorized a qualifying patient who has been provided with a written certification from a certifying physician in accordance with a *bona fide* physician-patient relationship to obtain medical cannabis. Chapter 474 of 2016 expanded the types of health care practitioners who may discuss medical cannabis with a patient; complete an assessment of a patient’s medical condition; and certify that a patient qualifies for medical cannabis to include dentists, podiatrists, nurse practitioners, and nurse midwives.

Medical cannabis may only be obtained from a grower or dispensary licensed by the commission, and the commission may license no more than 15 growers. There is no established limit on the number of processor licenses. While there is no specific restriction on the number of dispensaries in statute, regulations set a limit of 2 dispensary licenses per senatorial district or up to 94 dispensary licenses statewide. Most states with medical cannabis programs cap the number of growers, processors, and dispensaries in order to manage production and limit the size of the industry. States also typically use a merit-based application process to identify the best applicants and award licenses to those deemed most qualified.

#### **License Application Process**

The commission is required to actively seek to achieve racial, ethnic, and geographic diversity when licensing medical cannabis growers and to encourage applicants who qualify as a Minority Business Enterprise. The commission opened applications for grower, processor, and dispensary licenses in September 2015. Towson University’s Regional Economic Studies Institute (RESI) was commissioned to review the grower and processor applications through a double-blind review process in which all identifying information was redacted. The scoring system authorized the commission to take into account the geographic location of the growing operation to ensure geographic diversity in the award of licenses. The scoring system did not include a consideration of race, a decision based on a letter from the Office of the Attorney General stating that constitutional limits prohibited the consideration of race or ethnicity for licensing when there is no disparity study that indicates past discrimination in similar programs.

In August 2016, the commission announced the 15 growers and 15 processors who were awarded Stage One license pre-approvals. The evaluation procedures to be used in the award of dispensary licenses were adopted by the commission in November 2016, and the commission announced 102 dispensaries who were awarded Stage One license pre-approvals in December 2016.

(this number included 10 pre-approvals issued to applicants who also received grower license pre-approvals). All of the Stage One pre-approvals awarded in 2016 have 365 days from the date of pre-approval notification to complete all necessary steps to obtain final licensure. Should an awardee fail to do so, the commission may not issue a final license.

As of February 7, 2018, the commission has issued final licenses for 14 growers, 12 processors, and 30 dispensaries. Additionally, the commission has approved one-year provisional registrations for three independent testing laboratories. Medical cannabis has now been available to patients since December 2017. However, the commission has also cautioned repeatedly during its meetings that the public should not expect supply to fully and immediately meet demand, as the industry is still in the early stages of production, and any products must meet strict quality control standards, which may further delay full availability.

### **Controversy Over Geographic, Racial, and Ethnic Diversity**

Since the award announcement, there has been significant controversy surrounding two main issues: the decision to include geographic diversity as a final factor in choosing the grower finalists; and the fact that none of the 15 Stage One approved grower finalists are led by minorities.

Geographic diversity became an issue when two companies among the top 15 ranked growers did not receive pre-approval after being replaced by other companies in order to provide geographic representation throughout the State. In July 2016, a subcommittee of the commission unanimously voted to preliminarily approve the top 15 growers based on the RESI scoring, which did not include a consideration of location. Afterward, the subcommittee reversed its vote, which resulted in two lower ranked firms being moved into the top 15 growers in order to achieve geographic diversity. The two companies that were initially included in the top 15 growers but later removed are suing the commission, claiming that the determination of how geographic diversity was to be considered was unclear to applicants. In addition, none of the top 15 growers are minority owned, which prompted a lawsuit by an African American-owned company that was denied a grower license seeking to halt the medical cannabis program until the commission takes action to ensure racial and ethnic diversity among licensed growers.

Several bills relating to the composition of the commission and the number of grower and processor licenses, as well as licensing criteria and the approval process, were introduced during the 2017 legislative session. However, none of these bills passed. One of the more comprehensive bills, HB 1443, would have, on an emergency basis, repealed and reconstituted the membership of the commission and required extensive outreach to encourage industry participation by small, minority, and women business owners. The bill also would have required the Maryland Department of Transportation (MDOT) to conduct a disparity study, implement a new Small Medical Cannabis Enterprise Program, and establish a process for certification. The bill would also have increased the cap on medical cannabis grower licenses, instituted a cap for processor licenses, and prohibited the issuance of Stage One pre-approval licenses until the disparity study was completed and only in accordance with a new scoring process that focused on racial, ethnic, and geographic diversity.

*M00B0104 – MDH – Health Professional Boards and Commissions*

In April 2017, the Governor directed the Governor’s Office of Small, Minority, and Women Business Affairs to initiate a disparity study of Maryland’s regulated medical cannabis industry to be conducted by MDOT and in cooperation with the commission. The study was released on January 17, 2018, and concluded that there exists a strong basis in evidence for applying race- and/or gender-conscious remedial measures to the types of work involved in the medical cannabis business. Additionally, in July 2017, the Governor announced nine new appointments to the commission; of these, three appointments filled vacancies, and six replaced commissioners whose terms had expired. As a result of these appointments, minority representation on the commission doubled.

The chair of the commission has stated that the commission is committed to seeking and promoting racial diversity and minority inclusion and will continue to work with the legislature to help solve these complex problems but does not want to further delay the program. At its October 3, 2017 meeting, the commission announced that, as a result of discussions with the Legislative Black Caucus, it intends to form a minority affairs subcommittee on the commission to help address some of the caucus’ concerns.

**Appendix 1**  
**Current and Prior Year Budgets**  
**Maryland Department of Health – Health Professional Boards and Commissions**  
**(\$ in Thousands)**

	<u>General Fund</u>	<u>Special Fund</u>	<u>Federal Fund</u>	<u>Reimb. Fund</u>	<u>Total</u>
<b>Fiscal 2017</b>					
Legislative Appropriation	\$487	\$36,469	\$0	\$539	\$37,495
Deficiency Appropriation	0	0	0	0	0
Cost Containment	0	0	0	0	0
Budget Amendments	27	5,617	0	0	5,644
Reversions and Cancellations	-33	-7,835	0	-23	-7,892
<b>Actual Expenditures</b>	<b>\$481</b>	<b>\$34,251</b>	<b>\$0</b>	<b>\$516</b>	<b>\$35,248</b>
<b>Fiscal 2018</b>					
Legislative Appropriation	\$498	\$37,435	\$0	\$630	\$38,563
Cost Containment	-3	0	0	0	-3
Budget Amendments	0	0	0	0	0
<b>Working Appropriation</b>	<b>\$495</b>	<b>\$37,435</b>	<b>\$0</b>	<b>\$630</b>	<b>\$38,559</b>

Note: The fiscal 2018 appropriation does not include deficiencies, targeted reversions, or across-the-board reductions. Numbers may not sum to total due to rounding.

## **Fiscal 2017**

Actual spending for the Health Professional Boards and Commissions was \$2,247,183 below the legislative appropriation. The majority of this decrease was due to \$7,891,508 in cancellations and reversions at the end of the fiscal year, including \$7,835,382 in special funds, \$33,451 in general funds, and \$22,675 in reimbursable funds. Of these amounts, the largest cancellation came from the Maryland Medical Cannabis Commission (MMCC), which canceled \$4,001,063 in special funds due to staffing vacancies and projects that were not started until the end of the year. Staffing vacancies and lower than expected contractual expenses account for the remaining cancellations of \$3,834,319 in special funds and all of the general and reimbursable fund reversions and cancellations. There was also a decrease via budget amendment of \$21,188 in general funds and \$16,519 in special funds to realign the reduction from Section 20 of the fiscal 2017 budget bill.

These decreases were offset by various increases through budget amendments, including \$5,147,003 in special funds for increased costs at MMCC due to higher than expected workload trends from the first round of licensing. Other increases included:

- \$332,920 in special funds and \$3,393 in general funds for the fiscal 2017 increment;
- \$153,813 in special funds and \$35,140 in general funds to support contractual position expenditures that were omitted from the budget; and
- \$9,763 in general funds to support additional salary and overtime expenditures.

## **Fiscal 2018**

To date, the fiscal 2018 working appropriation is \$3,465 in general funds below the legislative appropriation, due to the cost containment action previously discussed in this analysis. There have been no changes to either the special fund or reimbursable fund appropriations.

**Appendix 2  
Audit Findings**

Audit Period for Last Audit:	March 25,2013 – September 27, 2015
Issue Date:	April 2017
Number of Findings:	7
Number of Repeat Findings:	1
% of Repeat Findings:	14.3%
Rating: (if applicable)	n/a

**Finding 1:** The Board of Professional Counselors and Therapists did not properly track complaints against licensees, resulting in complaints not being investigated and submitted to the Office of the Attorney General for administrative and/or criminal action in a timely manner.

**Finding 2:** The Board of Nursing did not always take timely action to suspend the licenses of delinquent noncustodial parents referred by the Child Support Administration as required by State law.

**Finding 3:** The Maryland Medical Cannabis Commission improperly used interagency agreements with a State university to procure license application evaluation services, circumventing competitive procurement and control agency approvals.

**Finding 4:** **Certain boards did not adequately control and account for collections.**

**Finding 5:** Seventeen boards and commissions did not ensure that employees handling collections were denied the capability to issue or renew licenses.

**Finding 6:** The Board of Physicians did not adequately monitor a rehabilitation services vendor and did not always obtain documentation to support amounts invoiced.

**Finding 7:** Password and account controls for the Board of Nursing, Physicians, and Pharmacy were not sufficient to properly protect critical data.

\*Bold denotes item repeated in full or part from preceding audit report.

**Appendix 3**  
**Major Information Technology Projects**  
**Maryland Department of Health – Health Professional Boards and Commissions**  
**Licensing and Regulatory Management System**

<b>Project Status</b>	Planning.	<b>New/Ongoing Project:</b>	New.					
<b>Project Description:</b>	An enterprise licensing and regulatory management solution (LRMS) capable of the management of every aspect of licensing and discipline, including software licenses and support, systems analysis, development, implementation, and support services for the Health Professional Boards and Commissions (HPBC).							
<b>Project Business Goals:</b>	For the Maryland Department of Health (MDH) and HPBC, to procure and implement an electronic LRMS system that will assure quality care through the efficient licensure and effective discipline of health providers.							
<b>Estimated Total Project Cost:</b>	\$3,868,200	<b>Estimated Planning Project Cost:</b>	n/a.					
<b>Project Start Date:</b>	November 2014.	<b>Projected Completion Date:</b>	June 2022.					
<b>Schedule Status:</b>	The project is in the initiation phase. The scope of the planning encompasses the collection of requirements, the assessment of commercial off-the-shelf options, the development of a justification for investment in implementation, and the draft of a preliminary request for proposals. A request for information to determine the availability of LRMS systems in the market was sent out in July 2016.							
<b>Cost Status:</b>	Fiscal 2019 funding included in the MDH – Administration allowance.							
<b>Scope Status:</b>	n/a.							
<b>Project Management Oversight Status:</b>	Department of Information Technology oversight is in place.							
<b>Identifiable Risks:</b>	High risks include the availability of funding beyond fiscal 2019, as well as working on interdependencies of the system across business partners, contracted vendors, federal databases, and other State agencies.							
<b>Additional Comments:</b>	This project is a continuation of the information technology project initiated by the Board of Physicians in fiscal 2015. However, funding from fiscal 2019 forward is coming from the Board of Nursing special fund.							
<b>Fiscal Year Funding (\$ in Thousands)</b>	<b>Prior Years</b>	<b>FY 2019</b>	<b>FY 2020</b>	<b>FY 2021</b>	<b>FY 2022</b>	<b>FY 2023</b>	<b>Balance to Complete</b>	<b>Total</b>
Personnel Services	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0
Professional and Outside Services	1,999.7	734.5	378.0	378.0	378.0	0.0	0.0	3,868.2
Other Expenditures	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
<b>Total Funding</b>	<b>\$1,999.7</b>	<b>\$734.5</b>	<b>\$378.0</b>	<b>\$378.0</b>	<b>\$378.0</b>	<b>\$0.0</b>	<b>\$0.0</b>	<b>\$3,868.2</b>

**Appendix 4**  
**Object/Fund Difference Report**  
**Maryland Department of Health – Health Professional Boards and Commissions**

<u>Object/Fund</u>	<u>FY 17</u> <u>Actual</u>	<u>FY 18</u> <u>Working</u> <u>Appropriation</u>	<u>FY 19</u> <u>Allowance</u>	<u>FY 18 - FY 19</u> <u>Amount Change</u>	<u>Percent</u> <u>Change</u>
<b>Positions</b>					
01 Regular	276.60	271.60	271.60	0.00	0%
02 Contractual	29.78	49.71	40.54	-9.17	-18.4%
<b>Total Positions</b>	<b>306.38</b>	<b>321.31</b>	<b>312.14</b>	<b>-9.17</b>	<b>-2.9%</b>
<b>Objects</b>					
01 Salaries and Wages	\$ 23,011,958	\$ 22,923,323	\$ 23,360,624	\$ 437,301	1.9%
02 Technical and Spec. Fees	2,417,957	3,794,174	2,953,767	-840,407	-22.1%
03 Communication	428,258	573,640	537,684	-35,956	-6.3%
04 Travel	310,753	584,535	516,968	-67,567	-11.6%
07 Motor Vehicles	146,500	50,968	143,738	92,770	182.0%
08 Contractual Services	6,988,830	7,990,293	7,934,668	-55,625	-0.7%
09 Supplies and Materials	327,965	349,992	353,566	3,574	1.0%
10 Equipment – Replacement	53,946	173,943	100,785	-73,158	-42.1%
11 Equipment – Additional	79,635	190,398	28,540	-161,858	-85.0%
12 Grants, Subsidies, and Contributions	0	250,000	250,000	0	0%
13 Fixed Charges	1,482,207	1,677,797	1,709,620	31,823	1.9%
<b>Total Objects</b>	<b>\$ 35,248,009</b>	<b>\$ 38,559,063</b>	<b>\$ 37,889,960</b>	<b>-\$ 669,103</b>	<b>-1.7%</b>
<b>Funds</b>					
01 General Fund	\$ 480,983	\$ 494,706	\$ 499,824	\$ 5,118	1.0%
03 Special Fund	34,250,720	37,434,831	36,759,525	-675,306	-1.8%
09 Reimbursable Fund	516,306	629,526	630,611	1,085	0.2%
<b>Total Funds</b>	<b>\$ 35,248,009</b>	<b>\$ 38,559,063</b>	<b>\$ 37,889,960</b>	<b>-\$ 669,103</b>	<b>-1.7%</b>

Note: The fiscal 2018 appropriation does not include deficiencies, targeted reversions, or across-the-board reductions. The fiscal 2019 allowance does not include contingent reductions or cost-of-living adjustments.

**Appendix 5**  
**Fiscal Summary**  
**Maryland Department of Health – Health Professional Boards and Commissions**

<u>Program/Unit</u>	<u>FY 17 Actual</u>	<u>FY 18 Wrk Approp</u>	<u>FY 19 Allowance</u>	<u>Change</u>	<u>FY 18 - FY 19 % Change</u>
04 Health Professional Boards and Commission	\$ 18,102,686	\$ 19,520,871	\$ 20,062,701	\$ 541,830	2.8%
05 Board of Nursing	8,113,521	8,970,249	8,263,109	-707,140	-7.9%
06 Maryland Board of Physicians	9,031,802	10,067,943	9,564,150	-503,793	-5.0%
<b>Total Expenditures</b>	<b>\$ 35,248,009</b>	<b>\$ 38,559,063</b>	<b>\$ 37,889,960</b>	<b>-\$ 669,103</b>	<b>-1.7%</b>
General Fund	\$ 480,983	\$ 494,706	\$ 499,824	\$ 5,118	1.0%
Special Fund	34,250,720	37,434,831	36,759,525	-675,306	-1.8%
<b>Total Appropriations</b>	<b>\$ 34,731,703</b>	<b>\$ 37,929,537</b>	<b>\$ 37,259,349</b>	<b>-\$ 670,188</b>	<b>-1.8%</b>
Reimbursable Fund	\$ 516,306	\$ 629,526	\$ 630,611	\$ 1,085	0.2%
<b>Total Funds</b>	<b>\$ 35,248,009</b>	<b>\$ 38,559,063</b>	<b>\$ 37,889,960</b>	<b>-\$ 669,103</b>	<b>-1.7%</b>

Note: The fiscal 2018 appropriation does not include deficiencies, targeted reversions, or across-the-board reductions. The fiscal 2019 allowance does not include contingent reductions or cost-of-living adjustments.