

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

## ***Executive Summary***

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The Maryland Department of Health contains 20 boards and 2 commissions that regulate health professionals throughout the State by certifying, licensing, and resolving consumer complaints.

## ***Operating Budget Data***

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(\$ in Thousands)

	<u>FY 18</u> <u>Actual</u>	<u>FY 19</u> <u>Working</u>	<u>FY 20</u> <u>Allowance</u>	<u>FY 19-20</u> <u>Change</u>	<u>% Change</u> <u>Prior Year</u>
General Fund	\$501	\$500	\$553	\$52	10.5%
Adjustments	0	2	11	9	
<b>Adjusted General Fund</b>	<b>\$501</b>	<b>\$502</b>	<b>\$564</b>	<b>\$61</b>	<b>12.2%</b>
Special Fund	35,150	38,700	41,180	2,480	6.4%
Adjustments	0	168	632	464	
<b>Adjusted Special Fund</b>	<b>\$35,150</b>	<b>\$38,869</b>	<b>\$41,812</b>	<b>\$2,944</b>	<b>7.6%</b>
Reimbursable Fund	510	631	555	-76	-12.1%
Adjustments	0	0	0	0	
<b>Adjusted Reimbursable Fund</b>	<b>\$510</b>	<b>\$631</b>	<b>\$555</b>	<b>-\$76</b>	<b>-12.1%</b>
<b>Adjusted Grand Total</b>	<b>\$36,161</b>	<b>\$40,002</b>	<b>\$42,931</b>	<b>\$2,929</b>	<b>7.3%</b>

Note: The fiscal 2019 appropriation includes deficiencies, a one-time \$500 bonus, and general salary increases. The fiscal 2020 allowance includes general salary increases.

- The large increase in the fiscal 2020 allowance over the fiscal 2019 appropriation is primarily driven by an increase in regular and contractual employee expenditures.

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

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## ***Personnel Data***

	<b><u>FY 18</u></b> <b><u>Actual</u></b>	<b><u>FY 19</u></b> <b><u>Working</u></b>	<b><u>FY 20</u></b> <b><u>Allowance</u></b>	<b><u>FY 19-20</u></b> <b><u>Change</u></b>
Regular Positions	271.60	273.60	272.60	-1.00
Contractual FTEs	<u>27.46</u>	<u>39.77</u>	<u>64.89</u>	<u>25.12</u>
<b>Total Personnel</b>	<b>299.06</b>	<b>313.37</b>	<b>337.49</b>	<b>24.12</b>

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

Turnover and Necessary Vacancies, Excluding New Positions	14.36	5.47%
Positions and Percentage Vacant as of 12/31/18	29.50	10.78%

- Contractual employees are continuing to increase across the Boards and Commissions with significant growth being seen in the Maryland Medical Cannabis Commission (MMCC), which adds 15.5 contractual full-time equivalents in the fiscal 2020 budget.

## ***Key Observations***

- MMCC continues to grow, primarily through additional contractual staff.

## **Operating Budget Recommended Actions**

	<b><u>Funds</u></b>
1. Reduce funding in the State Board of Pharmacy for the Enterprise Board Licensure System.	\$ 900,000
<b>Total Reductions</b>	<b>\$ 900,000</b>

## **Updates**

- The Maryland Board of Physicians elects not to license cardiovascular invasive specialists or develop continuing medical education courses for Lyme's or sickle-cell disease.
- The Maryland Board of Nursing is leading five other boards in the development of an Integrated Board Licensure System.

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## ***Operating Budget Analysis***

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### **Program Description**

The 20 health professional boards and 2 commissions within the Maryland Department of Health (MDH), certify, license, resolve consumer complaints, and assist in establishing parameters for various providers through regulations. Nearly all of the boards and commissions funding is generated through licensing fees with the exception of the State Board of Nursing Home Administrators and the State Board of Residential Child Care Administrators, which receive general funds.

Broadly, each board shares the same goals of (1) protecting the public by ensuring that practicing health professionals are properly credentialed and licensed to provide high-quality services to Marylanders; and (2) receiving, investigating, and resolving complaints in a timely manner.

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

#### **1. Achieving Processing Goals for Licensures**

The first goal of each board is to protect the public by insuring that the health professionals practicing in the State are properly credentialed. Each board has different procedures in place for issuing and renewing of licenses with some boards staggering renewals or having biannual renewals. **Exhibit 1** shows the number of initial and renewed licenses processed by each board.

**Exhibit 1**  
**Licenses Processed and Percent**  
**Processed within Goal**  
**Fiscal 2017-2018**

	<b>2017 Actuals</b>		<b>2018 Actuals</b>	
	<b><u>Licenses</u></b>	<b><u>Processed Within Goal</u></b>	<b><u>Licenses</u></b>	<b><u>Processed Within Goal</u></b>
<b>Nursing*</b>	<b>51,281</b>	<b>82.1%</b>	<b>50,644</b>	<b>81.6%</b>
Physicians and Allied Health*	28,030	99.8%	19,354	99.9%
Pharmacy*	11,897	99.8%	15,386	99.9%
Social Work*	7,281	100.0%	7,831	100.0%
<b>Dental Examiners*</b>	<b>5,212</b>	<b>64.0%</b>	<b>6,735</b>	<b>15.9%</b>
Physical Therapy*	4,483	100.0%	4,648	100.0%
Counselors/Therapists*	7,413	2.3%	3,403	100.0%
Audiologists*	2,461	100.0%	2,671	100.0%
Occupational Therapy	2,263	99.7%	2,489	98.5%
Psychologists*	1,554	100.0%	1,851	100.0%
Morticians*	1,296	100.0%	1,170	100.0%
Chiropractic*	765	100.0%	1,148	100.0%
Residential Child Care	333	100.0%	957	100.0%
Dietetic Practice*	957	100.0%	904	100.0%
Acupuncture*	562	100.0%	600	100.0%
Podiatric	478	100.0%	559	100.0%
Optometry*	435	100.0%	496	100.0%
Massage Therapy*	4,110	100.0%	427	100.0%
Nursing Home Administrators	245	100.0%	246	100.0%
Kidney Disease	156	100.0%	150	100.0%
Environmental Health Specialist*	495	95.4%	57	100.0%

Bold denotes boards that have failed issuance and renewal goal in fiscal 2018.

\*Boards with biennial renewal cycle.

Note: Processing goals is 5 days for renewals and 10 days for new licenses.

Source: Governor's Fiscal 2020 Budget Books

The boards aim to have at least 95% of the licenses processed within 10 days for initial licenses and within 5 days for a renewal. As shown in Exhibit 1, most boards are able to achieve this goal, and the majority of boards processing 100% of their new and renewed licenses within the goal. In fiscal 2018, only the Maryland Board of Nursing and the State Board of Dental Examiners failed to meet this goal. The State Board of Dental Examiners has consistently struggled to meet their licensure goal, and the low performance in fiscal 2018 is driven by only 10% of the renewals being processed within the goal. The State Board of Dental Examiners is also falling well short on new licensees as well, with only 45% being completed within 10 days. The State Board of Dental Examiners attributes these challenges to the current licensure system and anticipates performance improving with the new Enterprise Licensure System. **The State Board of Dental Examiners should comment on their struggles with meeting new and renewal licensure goals and what steps are being implemented to improve the timeliness of processing licenses.**

## **2. Complaint Processing**

The boards' other goal is to protect the public and promote the delivery of quality health care by receiving, investigating, and resolving complaints leveled against licensees in a timely manner. In fiscal 2018, six boards failed to meet the established timeframe for investigating and resolving complaints. These boards are listed in **Exhibit 2**, which also shows the goals established for each of these boards, and the share of investigations that they did complete within that specific goal. Additionally, Exhibit 2 shows improvement in the complaint investigation process at the Maryland Board of Nursing, the State Board of Dental Examiners, and the State Board of Social Work Examiners.

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**Exhibit 2**  
**Complaints Investigated Below Goal**  
**Fiscal 2018**

	<b>Total Complaints <u>Investigated</u></b>	<b>Established Goal for Resolution of <u>Complaint</u></b>	<b>% Investigated within Goal</b>	
			<b><u>2017</u></b>	<b><u>2018</u></b>
Nursing	810	90% in 270 days	23.9%	48.6%
Dental Examiners	218	100% in 180 days	74.2%	79.8%
Social Work	140	100% in 180 days	34.5%	39.3%
Morticians	91	100% in 180 days	87.4%	82.4%
Audiologists	91	100% in 180 days	96.4%	87.9%
Counselors/Therapists	51	100% in 180 days	50.0%	49.0%

Source: Governor's Fiscal 2020 Budget Books

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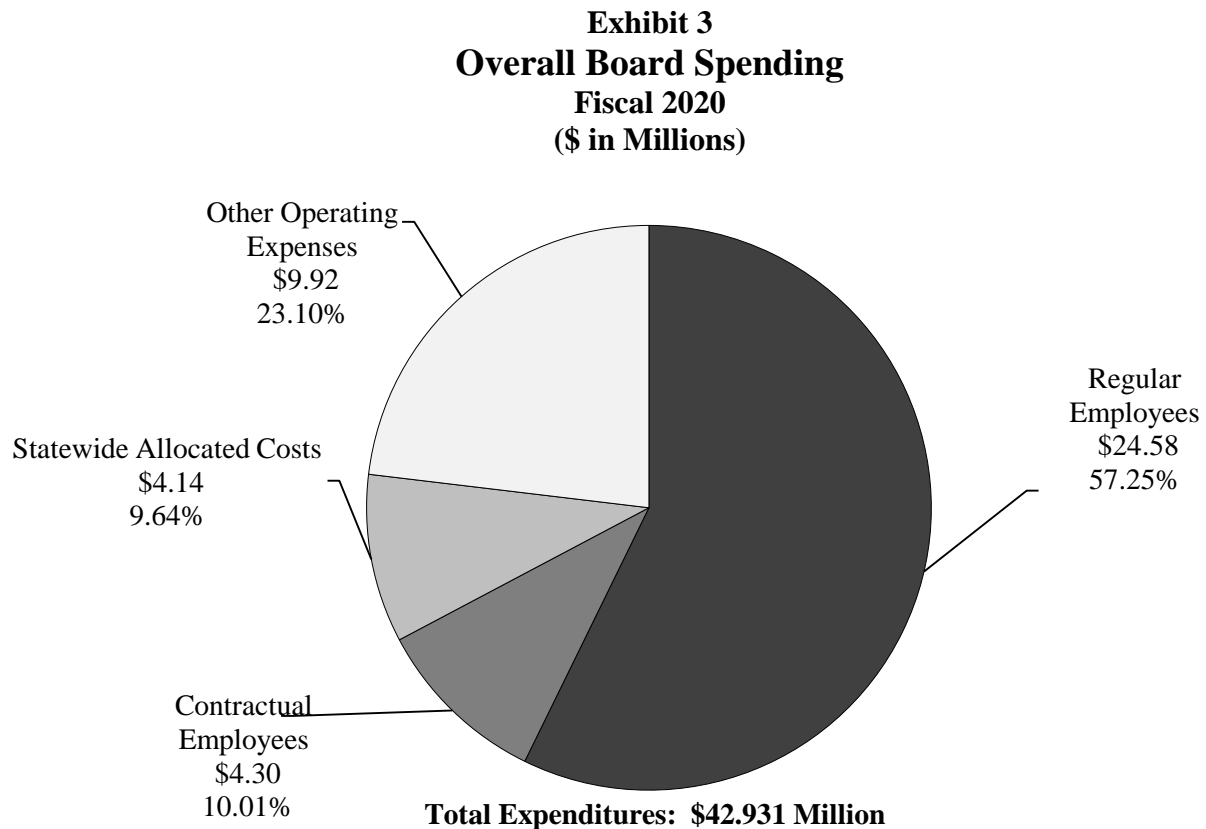
## Fiscal 2019 Deficiencies

The fiscal 2020 Budget Bill includes \$170,305 in deficiency funding for the boards for a \$500 one-time employee bonus and a 0.5% general salary increase, effective April 1, 2019.

## Fiscal 2020 Allowance

### Overview of Agency Spending

The Health Professional Boards and Commissions have a proposed fiscal 2020 budget of \$42,930,719. The overwhelming majority of the funding for the boards is generated through licensing fees with the exception of the State Maryland Board of Nursing Home Administrators and the State Board of Residential Child Care Administrators, which receive general funds. Collectively, with the largely administrative function of the boards, \$28,872,348 is spent on personnel expenses. The health professional boards vary greatly in size and expenditures, with the largest board, the Maryland Board of Physicians, budgeted for \$9,649,006 of expenditures in fiscal 2020. The smallest of the boards, the State Board of Environmental Health Specialists, has a fiscal 2020 budget of \$73,363. **Exhibit 3** shows how the boards collectively use their funding for all boards.



Source: Governor's Proposed Budget

## Proposed Budget Change

As seen in **Exhibit 4**, the budget of the boards increases by \$2,928,998 over the 2019 working appropriation. Much of this growth is driven by personnel increases and increases in statewide allocated costs.

### Exhibit 4 Proposed Budget MDH – Health Professional Boards and Commissions (\$ in Thousands)

<b>How Much It Grows:</b>	<b>General Fund</b>	<b>Special Fund</b>	<b>Reimb. Fund</b>	<b>Total</b>
Fiscal 2018 Actual	\$501	\$35,150	\$510	\$36,161
Fiscal 2019 Working Appropriation	502	38,869	631	40,002
Fiscal 2020 Allowance	<u>564</u>	<u>41,812</u>	<u>555</u>	<u>42,931</u>
Fiscal 2019-2020 Amount Change	\$61	\$2,944	-\$76	\$2,929
Fiscal 2019-2020 Percent Change	12.2%	7.6%	-12.1%	7.3%

#### Where It Goes:

<b>Personnel Expenses</b>	<b>\$893</b>
Fiscal 2020 general salary increase and annualization as of April 1, 2019 general salary increase offset by fiscal 2019 April 1, 2019 salary increase .....	\$618
Employees' retirement system .....	272
Increase in regular earnings including annualization of January 1, 2019 general salary increase .....	132
Employee and retiree health insurance premiums.....	89
Additional assistance for nurses and physicians .....	68
Other fringe benefit adjustments .....	25
Turnover expectancy .....	-47
Fiscal 2019 one-time employee bonuses.....	-146
2.0 positions transferred from MMCC and the State Board of Chiropractors to BHA, partially offset by 1.0 contractual conversion in the Maryland Board of Physicians .....	-119
<b>Statewide/Departmental Allocations and Board Coordination (All Boards)</b>	<b>\$854</b>
MDH indirect cost recovery .....	885
Telecommunications allocated expenses .....	240
Statewide personnel system allocation.....	16
Program coordination across the boards .....	1
DoIT services allocation .....	-35

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**Where It Goes:**

Legal services and support .....	-252
<b>State Board of Pharmacy</b>	<b>\$944</b>
Estimated share of new Enterprise Board Licensing System.....	900
Additional software maintenance expenditures .....	131
A net increase of 1 contractual FTE, as well as increases paid to contractual pharmacists and existing contractual administrative workers .....	103
Other operating expenses .....	-190
<b>Maryland Board of Nursing</b>	<b>\$382</b>
Net increase in 5.12 contractual FTEs, including 2.41 working on IT solutions and the new Enterprise Board Licensure System, an additional administrator (1.0 FTE) assisting with applicant background reviews, 1.59 other administrators, a .2 increase in Attorneys General assigned to the board, and a .8 decrease in contractual FTEs needed to conduct CNA site visits.....	314
Software maintenance for the online renewal of nursing assistants.....	118
Other operating expenses .....	55
Licensing of nursing assistants, electrologists, and midwives .....	4
Systems and data processing .....	-109
<b>State Board of Dental Examiners</b>	<b>\$183</b>
New software and software maintenance expenditures .....	160
Addition of 1.0 FTE contractual office secretary .....	32
Other operating expenses .....	-9
<b>State Board of Occupational Therapy Practice</b>	<b>\$72</b>
Addition of a contractual executive director (1.0 FTE) .....	86
Other operating expenses .....	-14
<b>Maryland Board of Physicians</b>	<b>\$11</b>
Operating expenses .....	173
Increase in need and costs of physician peer review contract.....	107
Software and data processing.....	10
Licensing of Allied Health Services providers .....	8
Contractual Database Specialist converted to regular FTE, offset by 0.5 increase in contractual administrator assisting with Allied Health licensure.....	-28
Decreased need in the Physicians Rehabilitation program .....	-260
<b>Maryland Medical Cannabis Commission</b>	<b>-\$485</b>
A net increase of 15.5 FTEs (see Issue 1).....	926
Software configuration for printing patient and agent identity cards.....	76
Equipment, maintenance, and other operating expenses.....	43
IT, software, and communications .....	-65



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**Where It Goes:**

Decrease in auditing expenses .....	-200
Decrease in contract expenses need for evaluation of dispensary and processor licenses .....	-1,266

**Other**

Change in operating expenses for other boards, including a net increase of 2 contractual FTEs .....	75
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<b>Total</b>	<b>\$2,929</b>
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BHA: Behavioral Health Administration  
CNA: certified nursing assistant  
DoIT: Department of Information Technology  
FTE: full-time equivalent  
IT: information technology  
MDH: Maryland Department of Health

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

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**Personnel**

Overall, the boards and commissions had a net decrease of 1 regular position. The State Board of Chiropractic Examiners and the Maryland Medical Cannabis Commission (MMCC) each had 1 regular position transferred to the Behavioral Health Administration. This was offset by 1 position coming into the Maryland Board of Physicians as a contractual conversion.

The boards collectively are continuing to use contractual positions to supplement regular full-time equivalents (FTE). Overall, the boards added 25.12 contractual employees, totaling an additional \$1,523,506 over the fiscal 2019 appropriation. However, as seen in **Exhibit 5**, the substantial increase in contractual employees by MMCC and the modest increase in a handful of boards are driving this trend. The MMCC contractual employees are discussed more extensively in Issue 1. Of the 12 boards that did not change the number of contractual FTEs in fiscal 2020, 6 still increased contractual FTE expenses. This was offset by the other 6 boards without a change in FTEs decreasing their expenditures, which nets to an increase of only \$4,409 over fiscal 2019.

**Exhibit 5**  
**Contractual Employees and Expense Increases**  
**Fiscal 2020**

<b><u>Board</u></b>	<b><u>Amount</u></b>	<b><u>FTEs</u></b>
Medical Cannabis	\$926,667	15.50
Nursing	314,282	5.12
Pharmacy	102,707	1.00
Occupational Therapy	85,917	1.00
Counselors/Therapists	45,130	1.00
Social Work	42,025	1.00
Dental Examiners	31,949	1.00
Nursing Home Administrators	18,514	0.50
Chiropractic	-20,043	-0.50
Physicians and Allied Health	-28,051	-0.50
All Other Board Changes (12)	4,409	0.00
<b>Total</b>	<b>\$1,523,506</b>	<b>25.12</b>

FTE: full-time equivalent

Source: Governor's Proposed Budget

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## **Other Changes**

Another significant increase in the Health Professional Boards and Commission's budget is \$900,000 for the State Board of Pharmacy's estimated prorated share of the expenses that will be incurred with the new Enterprise Licensure System, led by the Maryland Board of Nursing, further discussed in Update 1. However, total funding for this project is already budgeted in M00A01.08 – MDH – Administration Major Information Technology (IT) subprogram. **Therefore, the Department of Legislative Services (DLS) recommends reducing the State Board of Pharmacy's budget by \$900,000 to more appropriately reflect actual expenditures required for the board.**

## **Fund Balances**

As mentioned previously, 20 of the 22 boards are funded through special funds derived from user fees. Generally, MDH recommends that each board maintains a fund balance between 20% and 30% of annual expenditures. This level of fund balance allows the boards to account for unexpected expenditures, such as lawsuits or settlements. **Exhibit 6**, details individual board fiscal 2018 ending balances as a percent of their 2020 allowance. Providing that each board fully expends the current

fiscal 2019 working appropriation and the entirety of the 2020 allowance, only 2 boards will fall between 20% and 30% of annual expenditures in their fund balance. The majority of the boards are well above the safe range for their fund balance, with only 4 below 20%. However, 2 of these 4 boards (Environmental Health and Morticians) will be carrying a \$0 or negative fund balance into fiscal 2019.

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**Exhibit 6**  
**Fund Balance as Percent of Allowance**

	<b><u>Fiscal 2018 Closing Balance</u></b>	<b><u>Fiscal 2020 Allowance</u></b>	<b><u>Balance as % of Allowance</u></b>
Acupuncture	\$112,623	\$282,779	39.83%
Audiologists	161,518	421,077	38.36%
Chiropractic/ Massage Therapy	39,669	508,191	7.81%
<b>Dental Examiners</b>	<b>628,329</b>	<b>2,544,946</b>	<b>24.69%</b>
Dietetic	125,791	222,386	56.56%
Environmental Health	0	73,363	0.00%
Kidney Disease	39,819	204,020	19.52%
Medical Cannabis	964,076	6,431,945	14.99%
Morticians	-4,468	490,580	-0.91%
Occupational Therapy	593,924	697,125	85.20%
Optometry	112,746	308,894	36.50%
Pharmacy	2,482,809	4,813,545	51.58%
Physical Therapy	1,070,718	1,052,697	101.71%
Podiatric	318,560	341,377	93.32%
Counselors/Therapists	1,707,768	1,156,393	147.68%
Psychologists	608,180	694,188	87.61%
<b>Social Work</b>	<b>479,278</b>	<b>1,870,065</b>	<b>25.63%</b>
Physicians	4,867,528	9,649,006	50.45%
Nurses	3,160,746	8,881,598	35.59%

Note: Bold font indicates fund balance within 20% to 30% of 2020 allowance.

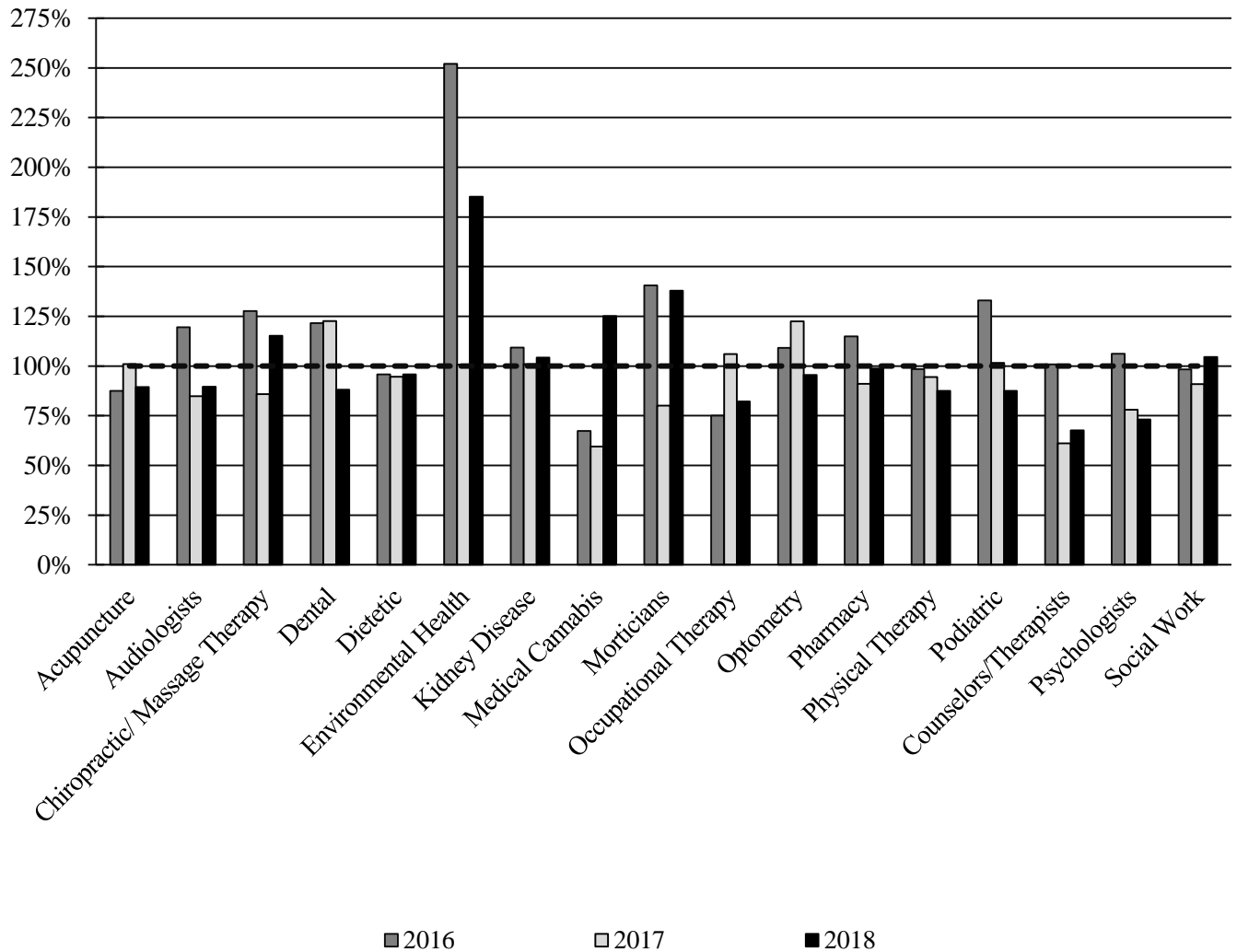
Source: Governor's Proposed Budget, Maryland Department of Health

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Building up a fund balance and gradually spending it down over time as board expenditures increase, for example through higher personnel costs, is common. This allows boards to keep license fees stable over a period of time. At least six of the smaller boards have outspent their revenue in each of the last three fiscal years, as shown in **Exhibit 7**. Only the Kidney Disease Commission and the Environmental Health Specialists have outspent their revenue in every year since fiscal 2016, but only two boards (the State Board of Dietetic Practice and the State Board of Physical Therapy Examiners)

have never done so in recent years. Every other small special-funded board needed to rely on their fund balance at least once over this period.

**Exhibit 7**  
**Expenditures as a Percent of Revenue**  
**Fiscal 2016-2018**



Source: Maryland Department of Health

## ***Issues***

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### **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. Medical cannabis may only be obtained from a grower or dispensary licensed by the commission. 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.

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

In August 2016, the commission announced the award of 15 grower and 15 processor Stage One license pre-approvals. The commission announced the award of 102 dispensary Stage One license pre-approvals in December 2016. After the award announcements, significant controversy arose from the decision to include geographic diversity as a final factor in choosing the grower finalists and the absence of any minority-led grower among the 15 Stage One approved grower finalists. Several bills addressing this controversy were introduced but failed during the 2017 session. Legislation to alter the commission and medical cannabis industry was again introduced in the 2018 session. Chapter 598 of 2018, an emergency bill, made a number of significant reforms including:

- requiring outreach to encourage participation in the medical cannabis industry by small, minority, and women business owners;
- requiring the commission to promulgate emergency remedial regulations based on the results of a disparity study and delay reviewing, ranking, or evaluating license applications until the regulations are adopted;
- establishing a new license cap for growers by raising the current statutory cap from 15 to 22 grower licenses; and
- establishing a new license cap of 28 processors, an increase over the current limit of 15.

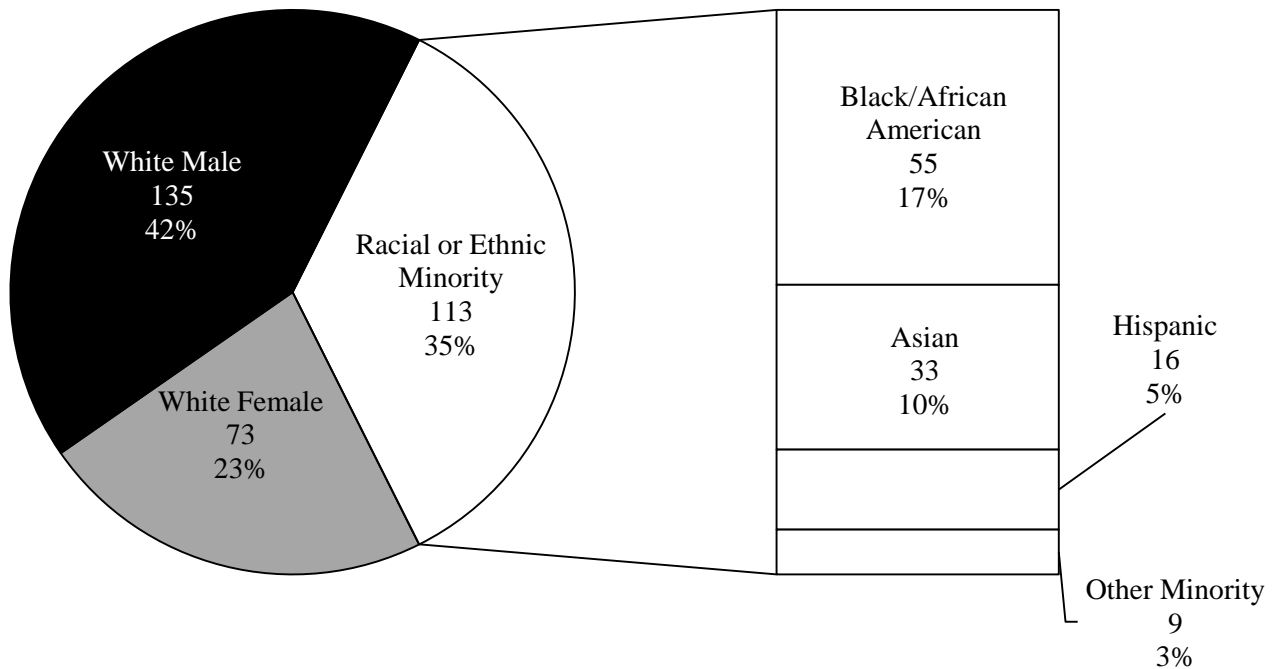
A disparity study also required by Chapter 598 concluded that there is a compelling interest to implement remedial measures to assist minorities and women seeking to participate in the medical cannabis industry. Based on these findings, the commission submitted emergency regulations in October 2018. The regulations alter the application review process for obtaining a medical cannabis

grower, processor, and dispensary license by implementing remedial measures to assist minorities and women in the medical cannabis industry. The regulations also alter the current weighted criteria used when ranking applicants for licenses to include certain race-neutral and race-conscious provisions, addressing the needs of women- and minority-owned applicants.

Chapter 598 also required each licensed grower, processor, and dispensary to submit an annual report to the commission on (1) the number of minority and women owners; (2) the ownership interest of any minority or women owners; and (3) the number of minority and women employees. The report from this summer shows ownership in the different facets of the medical cannabis industry. White males own 64% of licensed growers, 32% of licensed dispensaries, and 55% of licensed processors. **Exhibit 8** identifies total ownership of the different types of medical cannabis businesses across the State by racial, gender, and ethnic groups. Of the racial and ethnic minority owners, 39, or 34.5%, are women. Overall, 112 of the owners of grower, processor, or dispensaries in the State are women, or 34.8%.

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**Exhibit 8**  
**Racial and Ethnic Diversity among Medical Cannabis Owners**



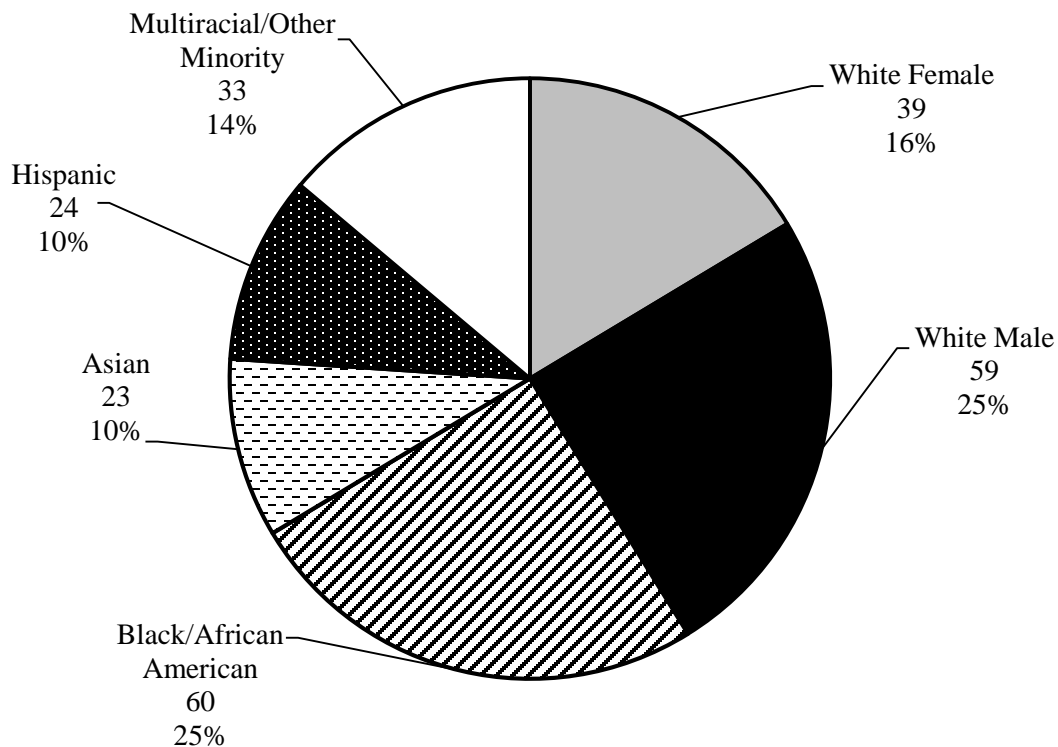
Source: Maryland Medical Cannabis Commission

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The commission reports greater diversity among employees involved in the medical cannabis industry with nearly 60% of employees being racial or ethnic minorities, shown in **Exhibit 9**.

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**Exhibit 9**  
**Racial and Ethnic Diversity among Medical Cannabis Employees**



Source: Maryland Medical Cannabis Commission

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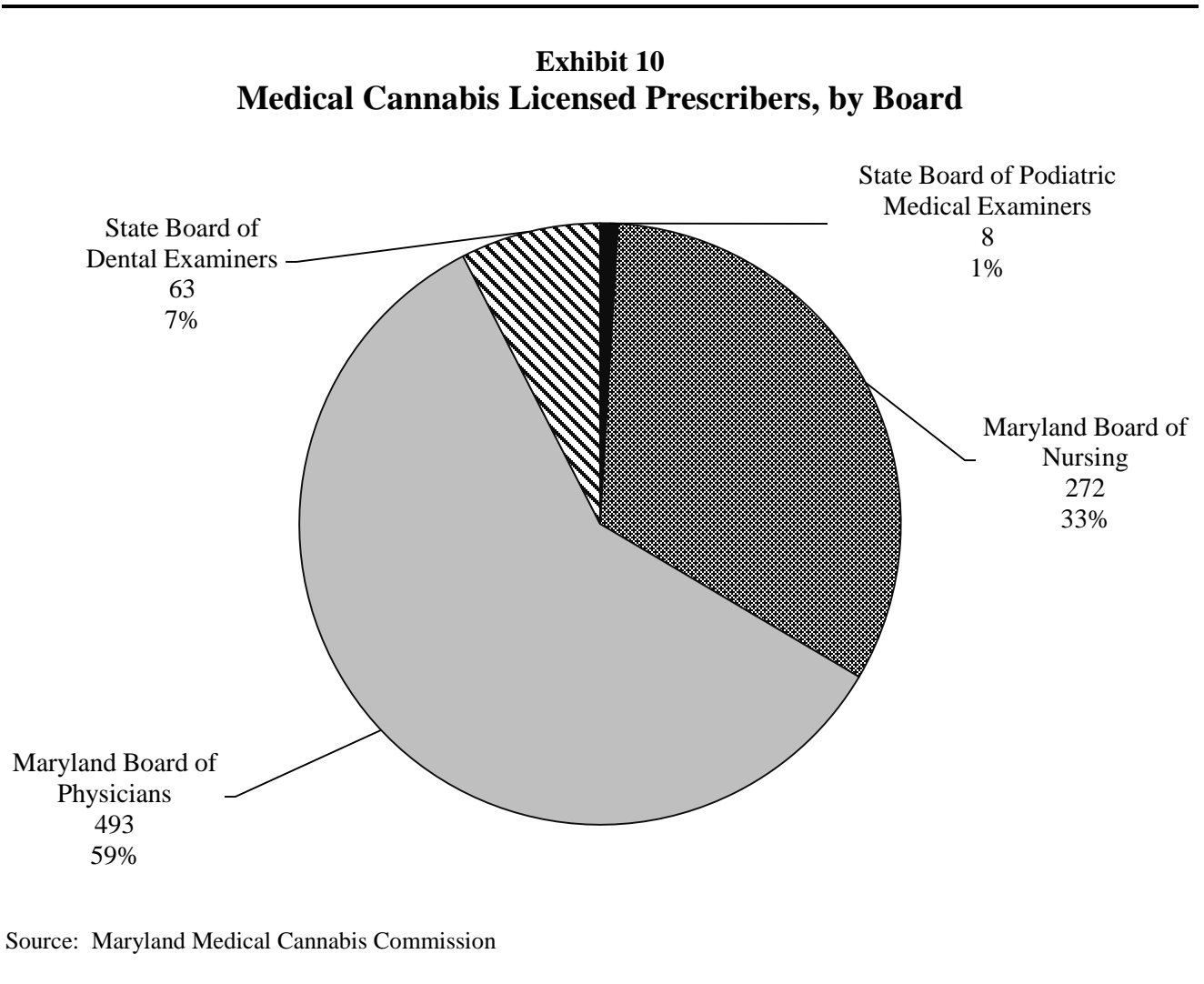
**The commission should comment on the status of minority participation in the medical cannabis industry in the State, their satisfaction with the current levels of minority involvement, and future efforts to encourage participation by women and minority business people.**

### **Status of Medical Cannabis Implementation in Maryland**

Medical cannabis became available for sale in the State in December 2017. As of December 2018, with one full year of sales, the commission has issued 14 final and 15 pre-approved grower licenses, 15 final and 14 pre-approved processor licenses, and 71 final and 31 pre-approved dispensaries. Additionally, the commission has five independent testing laboratories, three of which have received International Organization for Standardization certification.

In the first 12 months of sales, there have been nearly 2 million transactions in the State, totaling \$96,314,260 in sales. The commission, as of December 6, 2018, has nearly 75,000 registered patients, over 50,000 of which are certified. The commission reports receiving roughly 250 to 350 new patient applications per day. The commission has also approved 4,639 caregivers, with 959 pending. The commission reports that the majority of the pending applications for patients and caregivers are due to corrections needed from the applicants and that qualifying patients and caregivers are registered within seven days. The commission estimates that they will ultimately reach approximately 200,000 total registered patients.

The December 2018 list of registered providers has 836 throughout the State. Providers are required to be in good standing with their respective boards in order to certify that a patient qualifies for medical cannabis. The distribution of providers by board certification in Maryland is shown in **Exhibit 10**. The commission reports registering all providers within one day.





## **Pesticide Use in the Cultivation of Medical Cannabis**

Chapter 598 required the Maryland Department of Agriculture (MDA), in consultation with the commission, to submit emergency regulations to allow the registration and use of crop protection agents in the cultivation of medical cannabis as part of an integrated pest management plan. Prior to this legislation, no pesticides were permitted for use on medical cannabis in the State. MDA issued the required emergency regulations, effective July 6, 2018, to permit the use of specific pesticides or crop protection agents in the cultivation of medical cannabis. The regulations became effective October 8, 2018.

The commission has already imposed sanctions on pesticide violations on one firm in the State, issuing a \$125,000 fine, requiring refunds on certain products, and applying a two-year probationary period. An investigation into the firm, which started in July, included sworn testimonies from former employees that the firm's growing center was using pesticides. A commission investigation found that 15 pesticides may have been used on the products (6 of which would later be approved by MDA). Included in this finding is that the company must dispose of all products produced before May 31 and announce that it will accept returns and refunds. During the two-year probationary period, the firm will not be allowed to obtain any new licenses and will be subjected to more frequent and stringent inspections.

## **Advertising Regulations**

In December 2018, the commission unanimously agreed to issue regulations restricting where and how medical marijuana firms can advertise in the State. The regulations prohibit growers, processors, dispensaries, and other related businesses from advertising on billboards, radio, and television. Restrictions were also placed on print and digital advertisements only being allowed if the publication's audience is determined to be at least 85% over 18 years of age or older. Advertisements on websites, mobile applications, and social media must also employ an age-screening or verification that the user is above 18 years old. The advertising regulations did not impose requirements that companies support their medical treatment claims with scientific proof in their advertisements. **The commission should comment on the status of these proposed regulations.**

## **Licensure Consolidation**

In less than a year of the medical cannabis industry in Maryland, the State's regulators are already being presented with challenges regarding large, out-of-state firms gaining control of multiple dispensaries in the State. One such firm owns the licenses to five dispensaries to complement their grower and processing licenses. Although the regulations are written to limit a firm's interest in other licenses during the application process, there is nothing that prevents consolidation after licenses have been awarded. This creates the space for firms to hold interests in several licenses throughout the industry or have management contracts with other license holders. These management contracts provide the majority of the revenue to a larger firm for the operation of another entity's dispensary license, sometimes with the option to buy if and when regulations are changed. Chapter 598 included a provision to permit the sale or transfer of licenses for growers, processors, or dispensaries if the

license is actively used in the growing, processing, or dispensing of medical cannabis for the two years immediately preceding the sale or transfer. **The commission should comment on regulations being considered to limit the avenue for license consolidation by large, out-of-state firms through management contracts and the current state of license consolidation.**

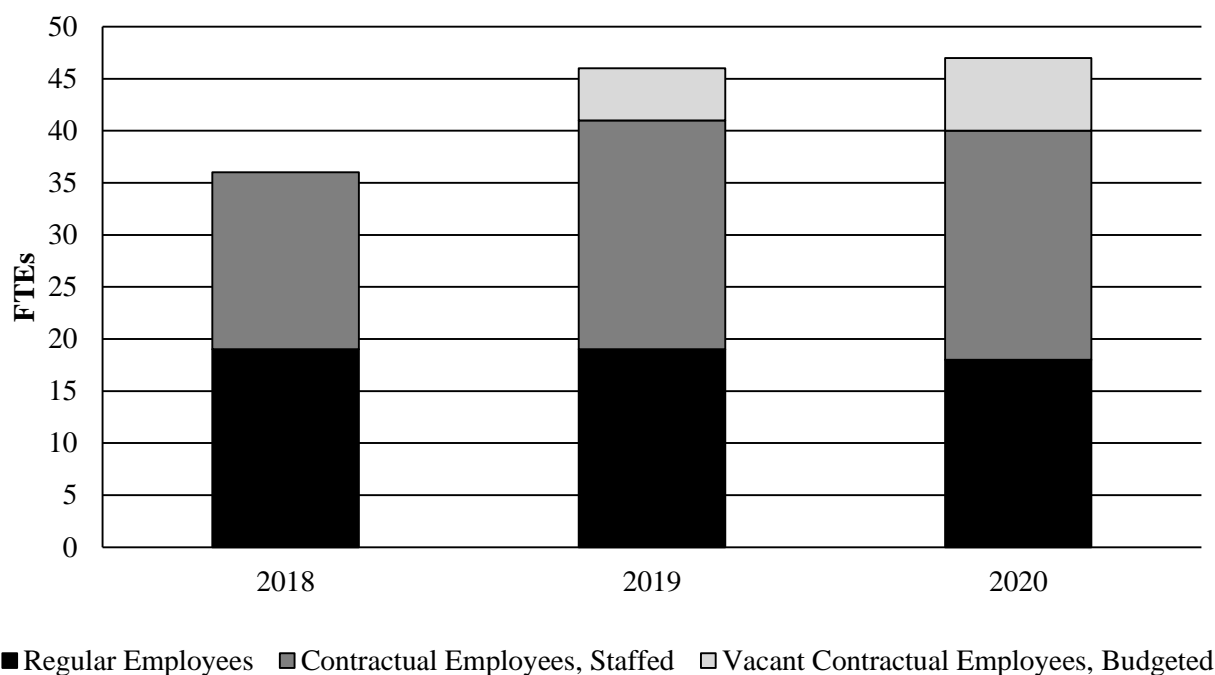
### **Patient Identification Cards**

MMCC also promulgated new regulations regarding the issuing of identity document (ID) cards to all new patients, which will print in the Maryland Register on February 1. Under current regulations, patients are authorized but not required to obtain ID cards for a \$50 fee, which is unchanged under the new regulations. The commission estimates that this new regulation will increase special fund revenues by \$4,900,000 through fiscal 2021. The regulations require renewal of the patient ID every three years. In the fiscal 2020 budget, MMCC has 7.0 FTE contractual employees involved in issuing patient ID cards as well as registering new patients, titled Quailty Assurance Specialists.

### **Use of Contractual FTEs**

With additional regulations, the reopening of the applications for processors and growers, and the first year of sales MMCC has faced a heavy workload. In order to respond to these demands, MMCC has significantly increased their staff, including their contractual workforce. As highlighted in the budget section of this analysis, MMCC's increase in contractual FTEs is one of the significant increases in expenditures for fiscal 2020. However, it should be noted that MMCC has more contractual employees on staff in fiscal 2019 than are reflected in the budget. MMCC reports having 17 FTE contractual employees in fiscal 2018, 22 FTEs on staff in fiscal 2019, while also recruiting for 5 vacant contractual employees. MMCC reports planning to recruit 2 more contractual FTEs in fiscal 2020, bringing their total contractual FTEs to 29. The staffing levels including vacant contractual employee positions, as shown in **Exhibit 11**, reflect what has been reported to DLS rather than what is reported in the fiscal 2020 budget.

**Exhibit 11**  
**Maryland Medical Cannabis Commission, Regular and Contractual Employees**  
**Fiscal 2018-2020**



FTE: full-time equivalent

Source: Governor's Proposed Budget; Maryland Medical Cannabis Commission

In addition to the 7 quality assurance specialists working on the patient ID cards and registering patients, another 10 enforcement compliance investigators are investigating and monitoring license holders. Additional roles for contractual FTEs in fiscal 2020 and 2019 are outlined in **Exhibit 12**. MMCC has contractual staff as education coordinators, policy analysts, and communications and outreach coordinators with new contractual staff needs in fiscal 2020 being a third policy analyst and a software developer.

**Exhibit 12**  
**Use of Contractual Employees by MMCC**  
**Fiscal 2019-2020**

<u>Position Title</u>	<b>2019</b>			<b>2020</b>		
	<u>Filled Positions</u>	<u>Vacant Positions</u>	<u>Contractual Staff Need</u>	<u>Filled Positions</u>	<u>Vacant Positions</u>	<u>Contractual Staff Need</u>
Enforcement and Compliance						
Investigator	7	3	10	7	3	10
Quality Assurance Specialists	7	0	7	7	0	7
Policy Analyst	2	0	2	2	1	3
Laboratory Administrator	0	2	2	0	2	2
Outreach and Communication						
Coordinator	2	0	2	2	0	2
Administrative Specialist: Enforcement and Compliance	1	0	1	1	0	1
Assistant Attorney General	1	0	1	1	0	1
Business Analyst	1	0	1	1	0	1
Education and Research Analyst	1	0	1	1	0	1
Software Developer	0	0	0	0	1	1
<b>Total</b>	<b>22</b>	<b>5</b>	<b>27</b>	<b>22</b>	<b>7</b>	<b>29</b>

MMCC: Maryland Medical Cannabis Commission

Source: Maryland Medical Cannabis Commission

While some of the work being done by contractual staff is likely to be short term and is due to increased workload with the first year of industry operations in Maryland, much of this work will be ongoing requirements of effectively monitoring Maryland's medical cannabis industry. **The commission should comment on the substantial use of contractual employees in their workforce, plans to convert contractual staff to regular employees, and if the tasks being done by the contractual staff will be ongoing.**

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

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	<b><u>Amount Reduction</u></b>
1. Reduce the fiscal 2020 special fund appropriation by \$900,000, currently budgeted as the State Board of Pharmacy's share of the Enterprise Board Licensure System. The funding for this project is already included elsewhere in the department's budget.	\$ 900,000 SF
<b>Total Special Fund Reductions</b>	<b>\$ 900,000</b>

## ***Updates***

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### **1. Cardiovascular Invasive Specialists Licensure**

The 2018 session saw two bills, HB 1008 and SB 1087, introduced to establish a new licensure category for cardiovascular invasive specialists (CIS). This legislation would have allowed for CIS in Maryland to perform fluoroscopy and other cardiac catheterization procedures in an effort to alleviate the workforce shortage Maryland hospitals are facing in their cardiac catheterization laboratories. The Maryland Board of Physicians, who was set to oversee the licensure of CIS in the proposed legislation, raised public safety concerns related to the adequacy of the education and training of CIS to perform the procedures outlined.

Due to these concerns, the legislation was withdrawn, and the budget committees included committee narrative directing the board to report on the practice of CIS and make a recommendation regarding their licensure within the State.

The board convened 14 members for a CIS workgroup that met four times throughout the interim. In evaluating the necessity of establishing licensure for CIS, the workgroup used an objective framework that has previously been used by the board in similar evaluations and by other states when determining the need for licensure of a profession. The workgroup's framework considered:

- risk of harm to the consumer;
- specialized skill and training required;
- extent of autonomous practice;
- scope of practice;
- economic costs; and
- alternatives to regulation.

An analysis of these criteria by board staff found that CIS should not be licensed by the board for several reasons. Notably, board staff found that there is no autonomous practice of CIS as they are at the delegation of a physician who is present in the room during procedures; imposing licensure, including the fees and qualifications associated with licensure, may hinder the workforce shortage in cardiac catheterization labs; and alternatives to licensure exist.

The board and CIS workgroup proposed that CIS be allowed to perform fluoroscopy and other cardiac catheterization procedures when delegated by the physician in certain limited circumstances. The duties being performed by CIS must be in a hospital cardiac catheterization laboratory with the physician physically present and directing the acts performed by CIS during the procedure. However,

the workgroup also requested that this proposal be limited to three years, providing time for a more thorough study into CIS that would allow the General Assembly to evaluate the proposal. The board has already started to identify possible data sources that could be collected to inform this future study and discussed the possibility of the Maryland Health Care Commission's assistance in the data collection given their expertise and experience with reviewing patient outcomes, health care workforce issues, and the needs of health systems within the State.

## **2. Maryland Board of Physicians Continuing Medical Education Courses**

Chapter 570 of 2018 included language restricting \$150,000 of the special fund appropriation within the Maryland Board of Physicians to be used to provide three continuing medical education (CME) courses: (1) opioid use disorder with a focus on addiction treatment, and the risks associated with opioid use; (2) medical best practices for individuals with sickle-cell disease and education related to identifying the sickle-cell trait; and (3) medical best practices and treatment for Lyme disease. The language further authorizes the board to process a budget amendment to backfill the \$150,000 once the CME courses have been developed.

In a letter to the budget committees dated October 17, 2018, the board expressed their willingness to develop a course on the proper treatment and use of opioids. Acknowledging the severity of the opioid crisis in Maryland, the board will expand their educational efforts related to the prevention, identification, and treatment of opioid use disorders. By the end of October, the board will have completed a Request for Information. This information will be used to finalize their Request for Proposals (RFP) for the development of the course pertaining to opioid use disorders.

However, the board has voted unanimously against using Maryland Board of Physicians funds to develop courses on sickle-cell and Lyme diseases. The board's opposition to the development of these courses is grounded in the lack of consensus within the medical community for treatment best practices. Given this lack of consensus, the board is concerned that a course developed by the board for the treatment of Lyme and sickle-cell disease may be construed as an endorsement of one treatment practice over another. The board also cites the Centers for Disease Control, who notes that there is no single best treatment for sickle-cell disease, and notes that complaints to the Maryland Board of Physicians are rarely related to the treatment of Lyme or sickle-cell disease. Additionally, the board highlights the duplicative resources that are already being offered by MDH to consumers and providers on both sickle-cell and Lyme disease.

The board is moving forward with the development of the RFP for the offering of CME concerning opioid use and treatment. If the board chooses not to go ahead with the other CME courses, then any unused special funds from the restricted \$150,000 would be canceled at the end of fiscal 2019.

## **3. Integrated Board Licensure System**

The MDH – Administration budget includes \$378,500 in special funds to support the planning and development 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 Maryland 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 RFP that it was ready to issue at the beginning of calendar 2017. However, the RFP was held back by the Department of Information Technology (DoIT) so that the scope could be changed to encompass more boards than just the Maryland Board of Physicians.

### **Maryland Board of Nursing and Others Continue the Enterprise System**

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 the need before moving forward. However, after months of planning and deliberations, the Maryland 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 fiscal 2018 report, it notes that the Maryland Board of Physicians has closed the project, and a formal closeout letter has been sent to MDH. However, the project is moving forward, with funding in fiscal 2019 and beyond slated to come from the Maryland Board of Nursing, which will now be the lead board for the new project. The other boards joining the project and that will ultimately use the new system are the State Board of Pharmacy, the State Board of Dental Examiners, the State Board of Professional Counselors and Therapists, and the State Board of Morticians and Funeral Directors. Currently, there is an expectation and agreement that funding will be shared across all participating boards. Additional details on this major IT project are provided in **Appendix 2**.



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

	<b><u>General Fund</u></b>	<b><u>Special Fund</u></b>	<b><u>Federal Fund</u></b>	<b><u>Reimb. Fund</u></b>	<b><u>Total</u></b>
<b>Fiscal 2018</b>					
Legislative Appropriation	\$498	\$37,435	\$0	\$630	\$38,563
Deficiency/Withdrawn Appropriation	-4	-205	0	0	-209
Cost Containment	-3	0	0	0	-3
Budget Amendments	9	495	0	0	505
Reversions and Cancellations	0	-2,575	0	-119	-2,694
<b>Actual Expenditures</b>	<b>\$501</b>	<b>\$35,150</b>	<b>\$0</b>	<b>\$510</b>	<b>\$36,161</b>
<b>Fiscal 2019</b>					
Legislative Appropriation	\$498	\$38,516	\$0	\$631	\$39,645
Budget Amendments	2	184	0	0	187
<b>Working Appropriation</b>	<b>\$500</b>	<b>\$38,700</b>	<b>\$0</b>	<b>\$631</b>	<b>\$39,831</b>

Note: The fiscal 2019 appropriation does not include deficiencies, a one-time \$500 bonus, or general salary increases. Numbers may not sum to total due to rounding.

## **Fiscal 2018**

Actual expenditures for the Maryland Health Professional Boards and Commissions were \$2,401,675 below the legislative appropriation. Section 19 of the fiscal 2019 Budget Bill withdrew \$308,695 due to a surplus in the health insurance account. The overwhelming majority of this reduction, \$305,178, was from special funds.

However, the larger influence was the cancellation of \$2,575,132 in special funds. The Maryland Board of Nursing alone accounted for nearly half of the canceled amount, \$1,236,939, predominately related to vacancy savings. The Maryland Board of Physicians canceled \$467,883 with the remaining \$870,310 spread throughout the other boards.

The cancellation of special funds were offset by a \$495,314 increase through budget amendments to increase spending on contract services and a \$100,000 deficiency appropriation for the Maryland Medicaid Cannabis Commission, also for contract expenses.

## **Fiscal 2019**

The fiscal 2019 working appropriation for the Health Professional Boards and Commissions has increased by \$186,658 over the legislative appropriation, only \$2,237 of which is in general funds. This is entirely due to the centrally budgeted January 1, 2019 general salary increases.

**Appendix 2**  
**Major Information Technology Projects**  
**Maryland Department of Health – Health Professional Boards and Commissions**  
**Licensing and Regulatory Management System**

<b>Project Status</b>	Initiation.			<b>New/Ongoing Project:</b>	Ongoing.			
<b>Project Description:</b>	An Enterprise Licensing and Regulatory Management Solution (ELMR) capable of the management of every aspect of licensing and discipline. These capabilities include software licenses and support, systems analysis, development, implementation, and support services for the health occupation boards.							
<b>Project Business Goals:</b>	To procure and implement an ELRM solution that will assure quality care through the efficient licensure and effective discipline of health providers. The ELRM solution will assure, advance, and protect the public’s health and welfare through proper credentialing, permitting, licensing, examination, inspection, and discipline of health providers, distributors, and facilities. This new system will also help enforce regulations and legislation, resolve complaints, and educate the public.							
<b>Estimated Total Project Cost:</b>	\$ 1,868,500			<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 Maryland Department of Health sent out a Request for Information to determine the availability of licensing solutions in the market in July 2016. A preliminary draft Request for Proposals has been created.							
<b>Cost Status:</b>	No known or anticipated cost changes at this time.							
<b>Scope Status:</b>	No known or anticipated scope changes at this time.							
<b>Project Management Oversight Status:</b>	The Department of Information Technology project oversight is in place.							
<b>Identifiable Risks:</b>	High risks include unknown final system and implementation costs and funding availability. Additionally, ELMR requires a high level of coordination between other State agencies, federal databases, and business partners to achieve maximum benefit of the new system.							
<b>Additional Comments:</b>	This project is a continuation of the information technology licensing project initiated by the Maryland Board of Physicians in fiscal 2015. However, funding from fiscal 2019 and beyond is from the Maryland Board of Nursing special fund.							
<b>Fiscal Year Funding (\$ in Thousands)</b>	<b>Prior Years</b>	<b>FY 2020</b>	<b>FY 2021</b>	<b>FY 2022</b>	<b>FY 2023</b>	<b>FY 2024</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	743.76	378.5	378.0	378.0	0.0	0.0	0.0	1,868.5
Other Expenditures	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
<b>Total Funding</b>	<b>\$743.8</b>	<b>\$378.5</b>	<b>\$378</b>	<b>\$0.0</b>	<b>\$0.0</b>	<b>\$0.0</b>	<b>\$0.0</b>	<b>\$1,868.5</b>

**Appendix 3**  
**Object/Fund Difference Report**  
**Maryland Department of Health – Health Professional Boards and Commissions**

<u>Object/Fund</u>	<u>FY 18 Actual</u>	<u>FY 19 Working Appropriation</u>	<u>FY 20 Allowance</u>	<u>FY 19 - FY 20 Amount Change</u>	<u>Percent Change</u>
<b>Positions</b>					
01 Regular	271.60	273.60	272.60	-1.00	-0.4%
02 Contractual	27.46	39.77	64.89	25.12	63.2%
<b>Total Positions</b>	<b>299.06</b>	<b>313.37</b>	<b>337.49</b>	<b>24.12</b>	<b>7.7%</b>
<b>Objects</b>					
01 Salaries and Wages	\$ 22,357,964	\$ 23,513,127	\$ 23,933,713	\$ 420,586	1.8%
02 Technical and Special Fees	2,323,150	2,953,767	4,477,273	1,523,506	51.6%
03 Communication	748,862	537,684	700,353	162,669	30.3%
04 Travel	324,587	516,968	498,111	-18,857	-3.6%
07 Motor Vehicles	56,536	143,738	39,743	-103,995	-72.4%
08 Contractual Services	8,005,870	9,723,621	9,963,857	240,236	2.5%
09 Supplies and Materials	359,132	353,566	347,692	-5,874	-1.7%
10 Equipment – Replacement	155,876	100,785	158,392	57,607	57.2%
11 Equipment – Additional	283,223	28,540	117,031	88,491	310.1%
12 Grants, Subsidies, and Contributions	0	250,000	250,000	0	0%
13 Fixed Charges	1,545,653	1,709,620	1,801,516	91,896	5.4%
<b>Total Objects</b>	<b>\$ 36,160,853</b>	<b>\$ 39,831,416</b>	<b>\$ 42,287,681</b>	<b>\$ 2,456,265</b>	<b>6.2%</b>
<b>Funds</b>					
01 General Fund	\$ 500,547	\$ 500,413	\$ 552,846	\$ 52,433	10.5%
03 Special Fund	35,149,835	38,700,392	41,180,280	2,479,888	6.4%
09 Reimbursable Fund	510,471	630,611	554,555	-76,056	-12.1%
<b>Total Funds</b>	<b>\$ 36,160,853</b>	<b>\$ 39,831,416</b>	<b>\$ 42,287,681</b>	<b>\$ 2,456,265</b>	<b>6.2%</b>

Note: The fiscal 2019 appropriation does not include deficiencies, a one-time \$500 bonus, or general salary increases. The fiscal 2020 allowance does not include general salary increases.

**Appendix 4**  
**Fiscal Summary**  
**Maryland Department of Health – Health Professional Boards and Commissions**

<u>Program/Unit</u>	<u>FY 18 Actual</u>	<u>FY 19 Wrk Approp</u>	<u>FY 20 Allowance</u>	<u>Change</u>	<u>FY 19 - FY 20 % Change</u>
04 Health Professional Boards and Commission	\$ 19,079,333	\$ 21,996,264	\$ 23,757,077	\$ 1,760,813	8.0%
05 Maryland Board of Nursing	7,562,409	8,262,612	8,881,598	618,986	7.5%
06 Maryland Board of Physicians	9,519,111	9,572,540	9,649,006	76,466	0.8%
<b>Total Expenditures</b>	<b>\$ 36,160,853</b>	<b>\$ 39,831,416</b>	<b>\$ 42,287,681</b>	<b>\$ 2,456,265</b>	<b>6.2%</b>
General Fund	\$ 500,547	\$ 500,413	\$ 552,846	\$ 52,433	10.5%
Special Fund	35,149,835	38,700,392	41,180,280	2,479,888	6.4%
<b>Total Appropriations</b>	<b>\$ 35,650,382</b>	<b>\$ 39,200,805</b>	<b>\$ 41,733,126</b>	<b>\$ 2,532,321</b>	<b>6.5%</b>
Reimbursable Fund	\$ 510,471	\$ 630,611	\$ 554,555	-\$ 76,056	-12.1%
<b>Total Funds</b>	<b>\$ 36,160,853</b>	<b>\$ 39,831,416</b>	<b>\$ 42,287,681</b>	<b>\$ 2,456,265</b>	<b>6.2%</b>

Note: The fiscal 2019 appropriation does not include deficiencies, a one-time \$500 bonus, or general salary increases. The fiscal 2020 allowance does not include general salary increases.