

M00B0104
Health Occupation Boards
 Department of Health and Mental Hygiene

Operating Budget Data

(\$ in Thousands)

	<u>FY 08</u> <u>Actual</u>	<u>FY 09</u> <u>Working</u>	<u>FY 10</u> <u>Allowance</u>	<u>FY 09-10</u> <u>Change</u>	<u>% Change</u> <u>Prior Year</u>
General Fund	\$346	\$304	\$341	\$37	12.1%
Contingent & Back of Bill Reductions	0	0	-8	-8	
Adjusted General Fund	\$346	\$304	\$333	\$29	9.6%
Special Fund	22,635	25,536	27,349	1,814	7.1%
Contingent & Back of Bill Reductions	0	0	-93	-93	
Adjusted Special Fund	\$22,635	\$25,536	\$27,256	\$1,720	6.7%
Reimbursable Fund	351	439	458	19	4.3%
Contingent & Back of Bill Reductions	0	0	-2	-2	
Adjusted Reimbursable Fund	\$351	\$439	\$455	\$17	3.8%
Adjusted Grand Total	\$23,332	\$26,279	\$28,045	\$1,766	6.7%

- The Governor's proposed budget for the Health Occupation Boards increases by \$1.8 million, or 6.7%.
- The budget assumes a contingent reduction of \$0.1 million to eliminate the deferred compensation match for State employees.

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

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Personnel Data

	<u>FY 08</u> <u>Actual</u>	<u>FY 09</u> <u>Working</u>	<u>FY 10</u> <u>Allowance</u>	<u>FY 09-10</u> <u>Change</u>
Regular Positions	222.30	245.80	252.80	7.00
Contractual FTEs	<u>13.95</u>	<u>4.25</u>	<u>6.15</u>	<u>1.90</u>
Total Personnel	236.25	250.05	258.95	8.90

Vacancy Data: Regular Positions

Turnover and Necessary Vacancies, Excluding New Positions	7.58	3.00%
Positions and Percentage Vacant as of 12/31/08	21.00	8.54%

- The Board of Nurses receives funding for 6.0 new regular positions to aid in complaint resolution.
- The Board of Dental Examiners receives funding for 1.0 new regular position for a telephone operator, which was a contractual position in fiscal 2009.

Analysis in Brief

Major Trends

All Boards Are Able to Meet Processing Goals for Licenses: In fiscal 2008, all of the boards met their goal for processing licenses in a timely manner. The total number of licenses issued in fiscal 2008 ranges from 126,926 by the Board of Nursing to 87 by the Board of Optometry.

Issues

Budget Reconciliation and Financing Act (House Bill 101/Senate Bill 166): The 2010 budget bill is balanced by transferring special fund balances to the general fund, per HB 101/SB 166. The legislation indicates that \$3.0 million from the fund balance of the Board of Physicians and \$0.5 million from the fund balance of the Board of Nurses shall be transferred to the general fund before the close of fiscal 2009. The bills also include transfers from the Board of Occupational Therapists and Board of Audiologists, Hearing Aid Dispensers, and Speech-language Pathologists (AUD/HAD/SLP) shall occur before the end of fiscal 2010 in the amount of \$0.1 million each. The transfer of funds from the Board of Occupational Therapists and AUD/HAD/SLP may result in a negative fund balance in fiscal 2011.

Complaints and Investigations: A recurring issue for the Health Occupation Boards is the ability of each board to respond to complaints and initiate investigations when necessary. Five of the 19 boards have not met self-set goals to complete investigations within the targeted time frame.

Recommended Actions

	<u>Funds</u>	<u>Positions</u>
1. Reduce funds for regular positions.	\$ 53,382	4.0
Total Reductions	\$ 53,382	4.0

Updates

Board of Dental Examiners Preliminary Sunset Evaluation: In December 2008, the Department of Legislative Services completed a preliminary sunset evaluation of the Board of Dental Examiners and found sufficient concerns in the areas of complaint resolution, annual fund balance, and customer service to warrant a full sunset evaluation for the board before its termination date on July 1, 2011.

M00B0104 – DHMH – Health Occupation Boards

Health Occupation Boards Task Force: The Task Force on Discipline of Health Care Professionals and Improved Patient Care was created in accordance with Chapter 212 of 2008. The task force was created to study and issue recommendations relating to Maryland’s 18 health occupations boards. Specifically, the task force examined board disciplinary procedures, the organizational structure of the boards and their relationship to the Department of Health and Mental Hygiene, and the complaint and investigation process of the boards.

M00B0104
Health Occupation Boards
Department of Health and Mental Hygiene

Operating Budget Analysis

Program Description

Under the Office of the Secretary of the Department of Health and Mental Hygiene (DHMH), there are 19 boards, including 1 commission, that regulate health professionals. These boards license and certify health professionals, resolve consumer complaints, and assist in establishing parameters for each profession through regulation.

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
- to receive, investigate, and resolve complaints in a timely manner.

Performance Analysis: Managing for Results

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 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 2007 and 2008. The total number of licenses issued in fiscal 2008 ranges from 126,926 by the Board of Nursing to 87 by the Board of Optometry.

The boards have different target goals for processing licenses in a timely manner. The goals range from 100% of licenses issued within 2 days of receipt of request to 100% of licenses issued within 60 days. All boards met their respective targets in fiscal 2008 for issuing licenses in a timely manner.

Exhibit 1
Number of Licenses Processed
Fiscal 2007-2008

<u>Board/Commission</u>	<u>2007</u>	<u>2008</u>
Nurses	135,458	126,926
Physicians	12,529	14,274
Social Work	6,222	5,746
Pharmacy	4,063	4,193
Dental Examiners	7,829	4,078
Physical Therapy Examiners	2,124	3,157
Occupational Therapists ¹	204	3,105
AUD/HAD/SLP ¹	473	2,793
Professional Counselors and Therapists	2,792	1,966
Chiropractic Examiners	2,900	1,287
Psychologists	1,265	1,283
Morticians	602	957
Dietetic Practice	800	722
Podiatric	460	472
Acupuncture	378	470
Nursing Home Administrators	266	282
Kidney Disease	119	115
Residential Child Care Administrators ²	n/a	88
Optometry	763	87

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

¹Board of Occupational Therapists and Board of AUD/HAD/SLP renew every two years.

²Board of Residential Child Care Program Administrators began issuing licenses in October 2007.

Source: Department of Health and Mental Hygiene

The second main 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. Five of the 19 boards were not able to process complaints according to their respective target timeframe, as shown in **Exhibit 2**. The chart shows the total number of complaints, the goal that the board has for timely complaint resolution, and the percentage of complaints that were actually processed according to its goal. For a more complete discussion of the number of complaints pending at each board and the staff dedicated to processing the complaints, refer to the Issues section of this analysis.

Exhibit 2
Complaints Not Processed in a Timely Manner
Fiscal 2008

<u>Board/Commission</u>	<u>Complaints Investigated</u>	<u>Goal</u>	<u>Actual 2008</u>
AUD/HAD/SLP	19	100% in 180 days	72%
Chiropractic Examiners	106	40% in 75 days	22%
Dental Examiners	27	85% in 180 days	74%
Social Work	126	95% in 190 days	92%
Physicians	1,542	95% in 18 months	88%

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

Source: Department of Health and Mental Hygiene

Fiscal 2009 Actions

Impact of Cost Containment

Cost containment actions approved by the Board of Public Works (BPW) in June and October 2008 reduced the general fund appropriation by \$30,506 and the special fund appropriation by \$103,518 for personnel expenses.

Proposed Budget

The fiscal 2010 budget for the Health Occupation Boards, as submitted by the Governor, increases by \$1.8 million, or 6.7%, over the fiscal 2009 working appropriation. As shown in **Exhibit 3**, general fund support increases by \$29,258, or 9.6%; special fund support increases by \$1.7 million, or 6.7%; and reimbursable fund support increases by \$16,530, or 3.8%.

Personnel

Personnel costs for the boards increase by \$1.4 million over the fiscal 2009 working appropriation. The Board of Nurses receives funding for 4.0 full-time equivalent (FTE) positions to assist the board in eliminating the backlog of complaints and 2.0 FTEs to conduct criminal history background checks on its licensees (\$0.4 million). Background checks became mandatory in October 2006. Since that time, the board has processed criminal history background checks on all new applicants for nursing licensure or certification as a Nursing Assistant. Beginning in July 2009, the board will begin to conduct reviews of renewal applicants. An attorney and administrative specialist were added to the board staff for that purpose. To assist in the elimination of complaint backlogs, an administrative specialist, two health facility surveyor nurses, and a health investigator were included in the fiscal 2010 allowance.

Exhibit 3
Proposed Budget
DHMH – Health Occupation Boards
(\$ in Thousands)

How Much It Grows:	General Fund	Special Fund	Reimb. Fund	Total
2009 Working Appropriation	\$304	\$25,536	\$439	\$26,279
2010 Allowance	<u>341</u>	<u>27,349</u>	<u>458</u>	<u>28,148</u>
Amount Change	\$37	\$1,814	\$19	\$1,869
Percent Change	12.1%	7.1%	4.3%	7.1%
Contingent Reductions	-\$8	-\$93	-\$2	-\$103
Adjusted Change	\$29	\$1,720	\$17	\$1,766
Adjusted Percent Change	9.6%	6.7%	3.8%	6.7%

Where It Goes:

Personnel Expenses

Regular earnings	\$580
Employee and retiree health insurance	464
New positions (7.0)	365
State contribution to employee retirement	209
Turnover adjustments	182
Other fringe benefit adjustments	95
Overtime	33
Workers' compensation premium assessment (Board of Physicians only)	14
Elimination of Other Post Employment Benefits funding	-393
Elimination of deferred compensation match	-103

Board of Physicians

Indirect costs paid to DHMH	229
In-state travel	15
Out-of-state travel	10
Decreased allowance for Administrative Hearings	-152

Board of Nurses

Rent increase	115
Per Diem reimbursement for board members increased from \$100 to \$200	63
Contractual investigator	46

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Where It Goes:

Fiscal 2009 purchase of data processing equipment	-99
Fiscal 2009 additions to License 2000 software	-55
All Other Boards	
Indirect costs paid to DHMH	133
Contractual position increase	73
Per diem reimbursement increases	31
In-state travel	24
Out-of-state travel	30
Decreased printing costs	-105
Motor vehicle purchase by Board of Pharmacy in fiscal 2009	-12
Other	-26
Total	\$1,766

DHMH: Department of Health and Mental Hygiene

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

Other increases to personnel expenses include regular earnings (\$0.6 million); employee and retiree health insurance (\$0.5 million); State contribution to employee retirement (\$0.2 million); and turnover adjustments (\$0.2 million).

Elimination of Other Post Employment Benefits funding decreases the budget by \$0.4 million. Also, the elimination of the deferred compensation match for State employees, which is contingent on the enactment of House Bill 101/Senate Bill 166, decreases the budget by \$0.1 million.

Operating

Operating expenses for the Board of Physicians increase due to higher indirect cost payments to DHMH (\$0.2 million), in-state travel (\$15,239), and out-of-state travel expenses (\$10,434). Funding for administrative hearings decreases by \$0.2 million in fiscal 2010.

Operating expenses for the Board of Nurses increase due to the following: higher rent payments (\$0.1 million); the per diem reimbursement rate for board members increased from \$100 to \$200 dollars per day (\$63,400); and funding for a contractual investigator (\$45,560). Purchases in fiscal 2009 for data processing equipment and License 2000 upgrades are not continued in fiscal 2010 and decrease the budget by \$0.2 million.

Operating expenses for all other boards increase due to higher indirect cost payments to DHMH (\$0.1 million); increased contractual positions at Professional Counselors, Dental Examiners, Social Work Examiners, Psychologists, and Physical Therapists (\$73,850); per diem reimbursement rate increases for Board members (\$31,454); and in-state and out-of-state travel expenses

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(\$0.1 million). Lower printing costs decrease the budget by \$0.1 million in fiscal 2010. Also, the Board of Pharmacy purchased a motor vehicle in fiscal 2009, which lowers the fiscal 2010 budget by \$11,746.

Issues

1. Budget Reconciliation and Financing Act of 2009 (House Bill 101/Senate Bill 166)

The 2010 budget bill is balanced by transferring special fund balances to the general fund, per House Bill 101/Senate Bill 166 (HB 101/SB 166). The bill indicates that \$3.0 million from the fund balance of the Board of Physicians and \$0.5 million from the fund balance of the Board of Nurses shall be transferred to the general fund before the close of fiscal 2009. The bill also includes transfers from the Board of Occupational Therapists and Board of Audiologists, Hearing Aid Dispensers, and Speech-Language Pathologists (AUD/HAD/SLP) shall occur before the end of fiscal 2010 in the amount of \$0.1 million each.

Exhibit 4 shows the balance of each board affected by HB 101/SB 166 including the balance, income, expenditure, and proposed general fund transfer for fiscal 2009 through 2011. Only the fiscal 2009 beginning balance is a finalized number. Income, expenditures, and subsequent balances are all estimates provided by DHMH. To the extent possible, actual income and expenditures in fiscal 2008 were used as estimates in fiscal 2011. The Board of Physicians makes other regular transfers to the general fund (outside of HB 101/SB 166) from penalties associated with licensee violations.

Exhibit 4 also shows the fund balance at the end of each fiscal year as a percent of total expenditures. The boards have set a target fund balance between 20 and 30% of expenditures needed to operate the board. The fund balance protects boards from unexpected costs that may occur during the year.

If HB 101/ SB 166 is passed as introduced, the Board of Physicians will have a \$3.3 million fund balance at the end of fiscal 2009, or 40.4%, of its annual required operating expenses. The Board of Nurses will have a \$1.0 million balance, representing 15.8% of its annual expenses.

If HB 101/SB 166 is passed as introduced, both the Board of Occupational Therapists and Board of AUD/HAD/SLP will be solvent at the end of fiscal 2010 when the transfer occurs. However, based on previous income and expenditure trends, both boards may run a negative balance by fiscal 2011. Both boards have a two-year renewal cycle which requires them to collect enough money to operate for two full years. So, while the ending balance in fiscal 2010, according to Exhibit 4, represents a 64.6% fund balance for Board of Occupational Therapists and 71.1% balance for the Board of AUD/HAD/SLP, it will not be enough to supplement the fiscal 2011 income to cover the annual expenses.

Adding to the low income levels for the AUD/HAD/SLP Board is the decision to institute a one-time renewal fee reduction from \$225 to \$143 in order to lower its annual fund balance. The reduction was approved at its October 23, 2008 board meeting and has already gone into effect. Some of its licensees have already renewed their license at the reduced fee. This action reduces the projected fiscal 2009 income by \$22,300 and the projected fiscal 2010 income by \$217,750.

**Exhibit 4
Projected Income, Expenditure, and Balance
Fiscal 2009-2011**

	<u>Board of Physicians</u>	<u>Board of Nursing</u>	<u>Board of Occupational Therapy</u>	<u>Board of AUD/HAD/SLP</u>
Fiscal 2009 Beginning Balance	\$7,502,277	\$1,633,578	\$543,384	\$580,333
Income	7,930,980	6,312,797	75,000	72,700
Expenditures	8,170,072	6,427,997	529,652	290,586
Transfers to GF	964,805	0	0	0
Transfer to GF per HB 101/SB 166	3,000,000	500,000	0	0
Fiscal 2009 Ending Balance	\$3,298,380	\$1,018,378	\$88,732	\$362,447
Fund Balance as %	40.4%	15.8%	16.8%	124.7%
Fiscal 2010 Beginning Balance	\$3,298,380	\$1,018,378	\$88,732	\$362,447
Income	8,233,230	6,991,950	791,000	357,750
Expenditures	8,959,555	6,967,973	473,601	362,502
Transfers to GF	987,987	0	0	0
Transfer to GF per HB 101/SB 166	0	0	100,000	\$100,000
Fiscal 2010 Ending Balance	\$1,584,068	\$1,042,355	\$306,131	257,695
Fund Balance as %	17.7%	15.0%	64.6%	71.1%
Fiscal 2011 Beginning Balance	\$1,584,068	\$1,042,355	\$306,131	\$257,695
Income	8,122,268	5,851,923	75,000	95,000
Expenditures	8,092,953	5,205,162	387,169	369,752
Transfers to GF	835,152	0	0	0
Fiscal 2011 Ending Balance	\$778,231	\$1,689,116	-\$6,038	-\$17,057
Fund Balance as %	9.6%	32.5%	-1.6%	-4.6%

AUD/HAD/SLP: Audiology, Hearing Aid Dispensers, Speech-language Pathologists
GF: general fund

Source: Department of Health and Mental Hygiene; Department of Legislative Services

Pressure exists on the budget of the Board of Occupational Therapists as well for the purchase of the License 2000 online renewal and document imaging program. This expense was planned for fiscal 2008 in partnership with the Board of Dental Examiners (BDE). However, the purchase was just made on January 1, 2009. The Occupational Therapy Board's portion of the system purchase price will be \$48,700.

Alternate Option

Given the fact that both the Occupational Therapist and AUD/HAD/SLP will have a negative balance at the end of fiscal 2011, DLS recommends an amendment to HB 101/SB 166 that calls for an alternative distribution for the \$0.2 million transfer to the general fund from the Health Occupations Boards. **Exhibit 5** shows the effect of an additional \$0.2 million transfer from the Board of Physicians to the general fund in fiscal 2009. The transfer in fiscal 2009 would replace the proposed \$0.2 million transfer in fiscal 2010 from the Boards of Occupational Therapy and AUD/HAD/SLP.

Exhibit 5 Alternate Plan for General Fund Transfers

	<u>Board of Physicians</u>	<u>Board of Occupational Therapy</u>	<u>Board of AUD/HAD/SLP</u>
Fiscal 2009 Beginning Balance	\$7,502,277	\$543,384	\$580,333
Income	7,930,980	75,000	72,700
Expenditures	8,170,072	529,652	290,586
Transfers to the general fund (GF)	964,805	0	0
Revised HB 101/SB 166 transfer	3,200,000	0	0
Fiscal 2009 Ending Balance	\$3,098,380	\$88,732	\$362,447
Fund Balance as %	37.9%	16.8%	124.7%
Fiscal 2010 Beginning Balance	\$3,098,380	\$88,732	\$362,447
Income	8,233,230	791,000	357,750
Expenditures	8,959,555	473,601	362,502
Transfers to GF	987,987		
Revised HB 101/SB 166 transfer	0	0	0
Fiscal 2010 Ending Balance	\$1,384,068	\$406,131	\$357,695
Fund Balance as %	15.4%	85.8%	98.7%
Fiscal 2011 Beginning Balance	\$1,384,068	\$406,131	\$357,695
Income	8,122,268	75,000	95,000
Expenditures	8,092,953	387,169	369,752
Transfer to GF	835,152	0	0
Fiscal 2011 Ending Balance	\$578,231	\$93,962	\$82,943
Fund Balance as %	7.1%	24.3%	22.4%

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

Source: Department of Health and Mental Hygiene and the Department of Legislative Services

Exhibit 5 shows projected income and expenditure through fiscal 2011 to demonstrate the effect of the transfer in the out-years and to accommodate the Occupational Therapists and AUD/HAD/SLP boards that collect the bulk of their income in the even years. Actual income and expenditure from fiscal 2008 was used to project the fund balance for the Board of Physicians in fiscal 2011. Eliminating the transfer from the Occupational Therapists and AUD/HAD/SLP boards will ensure the solvency of the boards in fiscal 2011, as shown in Exhibit 5.

Based on this analysis, DLS recommends an amendment to HB 101/SB 166 that would strike language directing \$100,000 be transferred from each of the Boards of Occupational Therapists and AUD/HAD/SLP to the general fund in fiscal 2010. Instead, language should be added to increase the transfer from the Board of Physicians to the general fund from \$3,000,000 to \$3,200,000 in fiscal 2009.

2. Complaints and Investigations

The Health Occupation Boards continue to face difficulties in responding to complaints in a timely manner. One of the three main responsibilities of each board is to receive and resolve complaints from the public, courts, employers, insurance companies, and other licensees. Fourteen of the 19 boards that received and processed complaints in fiscal 2008 were able to complete the investigation of the complaints in the time frame required. As shown in Exhibit 2, however, the other five were not able to process complaints according to the internally assigned timeframe.

Targeted Timeframe to Complete Complaint Investigation

As noted earlier in the analysis, the boards have very different goals for receiving and investigating the complaints that arise. The goals range from a low target of 40% of complaints investigated to 100% of complaints investigated. Furthermore, the number of days expected to complete the investigations also varies from board to board. **Exhibit 6** shows the variation in the targets for investigating complaints at each board. As the chart illustrates, there is very little uniformity or consensus as to how many complaints can be investigated and the time frame for that investigation.

Exhibit 6
Target Goals for Investigation of Complaints
Fiscal 2008

<u>Board/Commission</u>	<u>Target Goal</u>
Acupuncture	100% in 180 days
AUD/HAD/SLP*	100% in 180 days
Chiropractic Examiners*	40% in 75 days
Dental Examiners*	85% in 180 days
Dietetic Practice	100% in 180 days
Kidney Disease	100% in 180 days
Morticians	100% in 90 days
Nurses	70% in 270 days
Nursing Home Administrators	100% in 195 days
Occupational Therapists	100% in 180 days
Optometry	100% in 180 days
Pharmacy	85% in 90 days
Physical Therapy Examiners	100% in 120 days
Physicians*	95% in 18 months
Podiatric	98% in 180 days
Professional Counselors and Therapists	100% in 180 days
Psychologists	100% in 180 days
Residential Child Care Administrators	100% in 30 days
Social Work*	95% in 190 days

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

*Did not meet processing goal in fiscal 2008.

Source: Department of Health and Mental Hygiene

Investigators Per Board

One of the contributing factors associated with the inability of all of the boards to complete investigations is a lack of sufficient investigator positions and an inability to fill those positions. There are a total of 37 FTE investigator positions for the boards, but nearly half of those are employed by the Board of Physicians. The distribution of investigator positions is shown in **Exhibit 7**. In the case of smaller boards, investigators are shared across a number of boards.

Exhibit 7
Investigators and Workload Per Board
Fiscal 2008

<u>Board/Commission</u>	<u>Investigator Positions</u>	<u>Complaints Investigated</u>
Physicians	16.5	1,542
Nurses*	7.0	2,138
Chiropractic	2.0	106
Dental	3.0	27
Physical Therapy Examiners	2.0	139
Acupuncture	1.0	10
AUD/HAD/SLP	Shares with Acupuncture	19
Optometry	Shares with Acupuncture	26
Podiatry	Shares with Acupuncture	39
Kidney Disease	1.0	34
Morticians	1.0	26
Pharmacy	1.0	130
Psychologists	1.0	35
Social Work	1.0	126
Professional Counselors	Shares with Social Work	31
Occupational Therapy	0.5	10
Nursing Home Administrators	Shares with Occupational Therapy	21
Residential Child Care Administrators	0.0	0
Dietetic Practice	0.0	21

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

*Note: The numbers of complaints investigated in fiscal 2008 include criminal history background checks on all new applicants. These are resolved in a minimal amount of time.

Source: Department of Health and Mental Hygiene

Failure to investigate all complaints in a timely manner has been an ongoing problem for the boards and has been noted in numerous sunset reports for a variety of boards in recent years. In fact, a recommendation made by DLS in the sunset review of the Board of Professional Counselors and Therapists in October 2007 calls for the board to establish a systematic method for tracking complaints and disciplinary cases to more efficiently and effectively resolve the complaints that arise. The preliminary sunset evaluation of BDE also recommends a closer look at the complaint resolution process and ways to mitigate the backlog. Unfortunately, this problem is a recurring theme for all boards.

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The Health Occupation Boards Task Force, convened in accordance with Chapter 212 of 2008 studied, among other board issues, the complaint resolution process and ways to improve the process for licensees and the public. Among the recommendations produced by the task force with regard to improving the complaint resolution process are a uniform sanctioning process and guidelines, informal resolutions for single case standard of care cases to avoid having to process all complaints through a formal hearing, and set timeframes with regard to deciding to issue charges and setting the hearing date. A more complete summary of the recommendations produced by the task force are included in the Updates section of this document

DLS recommends that the agency comment on how it can improve its complaint and investigation system, including a discussion on recruitment barriers for investigative positions and opportunities for pooling investigative services. The agency should also comment on ways to incorporate findings from the Task Force on Discipline of Health Care Professionals and Improved Patient Care.

Recommended Actions

	<u>Amount Reduction</u>	<u>Position Reduction</u>
1. Reduce funds for 4.0 regular positions to allow for 4.0 contractual positions. In fiscal 2008, the Board of Nurses met its Managing for Results (MFR) goal to resolve 70% of disciplinary complaints within 270 days. The board credits the inclusion of criminal history background checks as a reason that it met its goal as they are resolved in a minimum of time. Unless the Board of Nurses increases its MFR goal, they demonstrate a capacity to meet its standards in fiscal 2009 and beyond. The problem lies in the backlog of cases facing the board. By the end of fiscal 2008, the Board of Nurses estimates to have 1,562 unresolved complaints including 887 carryover cases and 675 new cases. This reduction leaves sufficient funds for four contractual positions to address the short-term backlog problem. Ongoing positions are not needed.	\$ 53,382 SF	4.0
Total Special Fund Reductions	\$ 53,382	4.0

Updates

1. Board of Dental Examiners Preliminary Sunset Evaluation

In December 2008, DLS completed a preliminary sunset evaluation of the Board of Dental Examiners (BDE) and found sufficient concern to warrant a full sunset evaluation for the board before its termination date on July 1, 2011.

BDE last underwent a full evaluation as part of a sunset review in 2004. The 2004 full evaluation determined that the board and its staff had made significant progress in implementing the recommendations of the previous full sunset evaluation. As a result, Chapter 373 of 2005 extended the termination date to July 1, 2011, and required the board to report on its progress implementing recommendations of the 2004 evaluation.

The board has also been under a great deal of scrutiny surrounding an Office of the Inspector General's (OIG) review of board disciplinary operations and sanctioning outcomes. The OIG report, released in December 2007, found inconsistencies in the sanctioning process and other logistical challenges that impede the disciplinary process within BDE. In response to the OIG report, the General Assembly created a task force to study issues surrounding the disciplinary system of the health occupation boards and commissions.

In conducting its preliminary evaluation, DLS staff reviewed annual reports for the past five years, minutes from board meetings, the Maryland Dentistry Act and related regulations, the prior full sunset reviews of the board, and the operating budget of the board. In addition, DLS staff conducted interviews with the executive director and staff, attended two board meetings, and reviewed the OIG report.

Findings and Recommendations

The preliminary sunset found that the board had addressed some of the concerns cited in the 2004 sunset report and the OIG report; however, certain problems persist that affect the licensure and complaint investigation procedures at the board. Given the concerns raised in this evaluation and in the OIG report, DLS recommends a full evaluation of the State Board of Dental Examiners to address the following issues:

- **Complaint Resolution Process:** A full evaluation should look at the complaint resolution process to assess whether board efforts to expedite the complaint resolution process are effective and equitable. This would include an assessment of the Triage Committee, License 2000 updates, redaction policy, and the fully staffed investigative team. The evaluation should look at how these policies, updates, activities, and staffing levels are either improving or hindering the complaint resolution process. A full evaluation could also examine the chronic problem of investigator recruitment and retention within the board. In addition, a full evaluation could assess further impacts on the board related to the OIG report and the pending task force report.

- **Fund Balance:** A full evaluation should look at how the board is balancing its finances, taking into account expenditures on three new staff members whose positions had been vacant for a year or more (two investigators and one telephone operator). In addition, the evaluation should look at how the board is accounting for the cost of implementing the software updates it recently decided to purchase. While the board's current fund balance is high, it could be quickly reduced by paying the salaries of new staff and the costs associated with software updates.
- **Customer Service:** A full evaluation should look at customer service issues given the addition of a full-time telephone operator and updated web site.

2. Health Occupation Boards Task Force

The Task Force on Discipline of Health Care Professionals and Improved Patient Care was created in accordance with Chapter 212 of 2008. The task force was created to study and issue recommendations relating to Maryland's 18 health occupations boards. Specifically, the task force examined board disciplinary procedures, the organizational structure of the boards and their relationship to DHMH, and the complaint and investigation process of the boards.

In studying these issues, the task force focused its deliberations on four main areas: fairness (in both process and outcome of disciplinary actions); timeliness of board action; communication between boards, respondents, complainants, and the public; and reliable data collection for various board actions. Within these focus areas, the task force explored the current board practices in Maryland as well as board practices in other states.

Findings and Recommendations

- **Statute of Limitations:** Absent unusual circumstances, boards should not charge based solely on events that occurred more than six years before the initiating complaint. The six-year time limit would not apply to cases involving criminal convictions, sexual abuse, reciprocal discipline matters, and ongoing substance abuse.

The six years begin the latter of (1) actual discovery by the complainant of the facts complained of; or (2) the date when the complainant, if exercising due diligence, should have discovered the facts at issue in the complaint.

Unusual circumstances include fraudulent concealment by the licensee of material information, repressed memory by the patient, or acts that occur while patient is a minor.

- **Peer Review:** In standard of care cases where peer review is conducted, licensees under investigation should be given the opportunity to review the preliminary written report and the opportunity to respond to questions or concerns expressed by the peer reviewer prior to the finalization of the report.

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- **Sanctioning Guidelines:** Each board should adopt specific sanctioning guidelines that will be applied to that board to increase uniformity in board sanctions for similar infractions. All guidelines should conform to a general framework or incorporate a common set of elements across all 18 boards.
- **Board Resources:** Boards should be able to use their own financial resources to hire staff needed within State personnel guidelines.
- **Collecting Racial and Ethnic Data:** All boards should collect racial and ethnic information on a mandatory basis as part of their licensing application process. The collection of racial data was one of the main reasons for the creation of the task force, due to allegations of the Dental Board that sanctions were not uniformly imposed on licensees with respect to race or ethnicity. By collecting race data, fairness in licensure and disciplinary process could be verified. Research performed by the task force showed that collecting race and ethnicity data is allowed by federal and State law.
- **Other Timeliness Issues:** As a rule, a board should complete its investigation and vote on whether or not to issue charges within 18 months of the date a complaint is filed. After the board has voted to charge, absent good cause, charges should be issued no later than 90 days after the decision has been made. The hearing shall be set no earlier than 90 days from the date the charges are served on the licensee, except at the request of the licensee. Lastly, absent good cause, the board should render its decision within 90 days of the later of the receipt of the opinion from the Office of Administrative Hearings, or the final day of any hearing before the board.
- **Data Collection:** Boards should collect data relating to the age of cases at various stages of the disciplinary process which should be incorporated to StateStat whenever possible.
- **Communication with Complainants and Respondents:** With the exception of the Board of Physicians and the Board of Nursing, each board should adopt the following timelines and guidelines for communication with complainants and respondents:
 - complainant and respondent should be notified of the receipt of a complaint within 7 days of the receipt of that complaint;
 - a status update should be sent to the respondent and the complainant within 90 days of the receipt of the complaint; and
 - after disposition, a final notification letter should be sent to the complainant and the respondent within 7 days of completion of the case.
- **Public Information:** The data on disciplinary actions recorded through StateStat should be made available through each board's web site. Additionally, the boards and the DHMH Public Information Office should be encouraged to utilize various methods of communication including flyers, public notices of board meetings, televised board meetings, and outreach to the public through speakers to groups and organizations.

Current and Prior Year Budgets

Current and Prior Year Budgets Health Professionals Boards and Commission (\$ in Thousands)

	<u>General Fund</u>	<u>Special Fund</u>	<u>Federal Fund</u>	<u>Reimb. Fund</u>	<u>Total</u>
Fiscal 2008					
Legislative Appropriation	\$203	\$23,460	\$0	\$334	\$23,998
Deficiency Appropriation	0	0	0	0	0
Budget Amendments	145	393	0	31	569
Cost Containment	0	-188	0	0	-188
Reversions and Cancellations	-2	-1,030	0	-14	-1,046
Actual Expenditures	\$346	\$22,635	\$0	\$351	\$23,332
Fiscal 2009					
Legislative Appropriation	\$331	\$25,328	\$0	\$439	\$26,097
Cost Containment	-31	-104	0	0	-134
Budget Amendments	4	311	0	0	315
Working Appropriation	\$304	\$25,536	\$0	\$439	\$26,279

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

Fiscal 2008

In fiscal 2008, the budget for the Health Professionals Boards and Commission (boards) closed at \$23.3 million, a decrease of \$0.7 million over the original legislative appropriation. The boards are primarily funded with special funds from licensing and regulatory fees, with the exception of the State Board of Examiners of Nursing Home Administrators and the State Board of Residential Child Care Administrators which are funded by general funds.

In fiscal 2008, the general fund appropriation increased by \$142,874, primarily due to budget amendments. The most significant amendment added general funds in the amount of \$111,400 to cover operating costs for the Board of Residential Child Care Administrators, in accordance with the fiscal 2008 budget bill. Other amendments include an increase for a 2008 cost-of-living adjustment (COLA) (\$2,483), an increase to cover the cost of supplies and salaries (\$31,383), and a decrease due to cost containment actions (\$215). Finally, \$2,176 in general fund appropriation was reverted at the end of the year.

Special fund appropriation decreased by \$0.8 million. The fiscal 2008 COLA increased funds by \$234,662. An amendment added \$158,106 to cover the cost of 4.2 FTEs for the Board of Pharmacy to complete pharmacy inspections. Two cost containment items decreased funds for supplies and materials (\$22,851) and the elimination of 9.0 FTEs (\$164,737)

A total of \$1 million in special fund appropriation was cancelled due to the inability to fill positions as a result of the hiring freeze. For the Pharmacy Board, the hiring freeze also meant a start up delay for the new inspection program mentioned above. In addition to vacant positions, the Board of Physicians also had to cancel payments for invoices that were processed too late due to close-out timing. These payments were paid in fiscal 2009 instead.

Reimbursable fund appropriation increased by \$30,782 to cover operating costs such as turnover, office supplies, and replacement data equipment. However, \$13,820 of that appropriation was cancelled at the end of the year.

Fiscal 2009

The fiscal 2009 working appropriation is \$0.2 million higher than the original legislative appropriation. Cost containment actions approved by BPW in June and October account for a \$30,506 decrease in general fund appropriation and a \$103,518 decrease in special funds, primarily for personnel reductions.

Budget amendments increase the budget by \$0.3 million including: \$3,889 in general funds and \$251,712 in special funds for the fiscal 2009 COLA; and \$59,746 in special funds for an annual salary review increase.

Audit Findings

Audit Period for Last Audit:	June 1, 2005 – January 31, 2008
Issue Date:	January 2009
Number of Findings:	8
Number of Repeat Findings:	2
% of Repeat Findings:	25%
Rating: (if applicable)	n/a

- Finding 1:*** Certain boards had not established adequate control and accountability over collections and professional licenses.
- Finding 2:*** DHMH had not consolidated certain fiscal and license record keeping functions of the boards and commission, and had not provided adequate oversight in these areas.
- Finding 3:*** The Board of Physicians did not have sufficient procedures to verify that physicians had obtained the required continuing medical education, and did not withhold renewal licenses from physicians who had failed to complete educational requirements.
- Finding 4:*** Controls over the licensing database within Board of Physicians were not adequate.
- Finding 5:*** The Board of Nursing had not established adequate procedures to ensure that the license status recorded for nurses on its online licensing system was accurate.
- Finding 6:*** Access controls over the licensing database and critical database activity monitoring were not adequate for the Board of Nursing.
- Finding 7:*** The Nursing Board had not obtained an annual independent audit of the online renewal system maintained by an independent contractor.
- Finding 8:*** The Board of Pharmacy did not register and approve pharmacy technicians within the timeframe specified by State law.

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

**Object/Fund Difference Report
DHMH – Health Occupation Boards**

<u>Object/Fund</u>	<u>FY08 Actual</u>	<u>FY09 Working Appropriation</u>	<u>FY10 Allowance</u>	<u>FY09 - FY10 Amount Change</u>	<u>Percent Change</u>
Positions					
01 Regular	222.30	245.80	252.80	7.00	2.8%
02 Contractual	13.95	4.25	6.15	1.90	44.7%
Total Positions	236.25	250.05	258.95	8.90	3.6%
Objects					
01 Salaries and Wages	\$ 14,269,827	\$ 16,586,615	\$ 18,134,796	\$ 1,548,181	9.3%
02 Technical and Spec. Fees	1,143,381	1,282,784	1,429,123	146,339	11.4%
03 Communication	526,287	743,451	725,170	-18,281	-2.5%
04 Travel	308,465	528,808	612,072	83,264	15.7%
07 Motor Vehicles	1,366	17,957	4,994	-12,963	-72.2%
08 Contractual Services	5,387,551	5,212,354	5,362,150	149,796	2.9%
09 Supplies and Materials	222,978	234,020	222,683	-11,337	-4.8%
10 Equipment – Replacement	70,011	21,280	12,280	-9,000	-42.3%
11 Equipment – Additional	187,119	304,623	168,904	-135,719	-44.6%
12 Grants, Subsidies, and Contributions	0	25,000	25,000	0	0%
13 Fixed Charges	1,215,488	1,321,738	1,450,949	129,211	9.8%
Total Objects	\$ 23,332,473	\$ 26,278,630	\$ 28,148,121	\$ 1,869,491	7.1%
Funds					
01 General Fund	\$ 346,118	\$ 304,216	\$ 341,132	\$ 36,916	12.1%
03 Special Fund	22,635,185	25,535,696	27,349,341	1,813,645	7.1%
09 Reimbursable Fund	351,170	438,718	457,648	18,930	4.3%
Total Funds	\$ 23,332,473	\$ 26,278,630	\$ 28,148,121	\$ 1,869,491	7.1%

Note: The fiscal 2009 appropriation does not include deficiencies. The fiscal 2010 allowance does not include contingent reductions.

**Fiscal Summary
DHMH – Health Occupation Boards**

<u>Program/Unit</u>	<u>FY08 Actual</u>	<u>FY09 Wrk Approp</u>	<u>FY10 Allowance</u>	<u>Change</u>	<u>FY09 - FY10 % Change</u>
04 Health Professional Boards and Commission	\$ 10,034,358	\$ 11,680,561	\$ 12,220,593	\$ 540,032	4.6%
05 Board of Nursing	5,205,162	6,427,997	6,967,973	539,976	8.4%
06 Maryland Board of Physicians	8,092,953	8,170,072	8,959,555	789,483	9.7%
Total Expenditures	\$ 23,332,473	\$ 26,278,630	\$ 28,148,121	\$ 1,869,491	7.1%
General Fund	\$ 346,118	\$ 304,216	\$ 341,132	\$ 36,916	12.1%
Special Fund	22,635,185	25,535,696	27,349,341	1,813,645	7.1%
Total Appropriations	\$ 22,981,303	\$ 25,839,912	\$ 27,690,473	\$ 1,850,561	7.2%
Reimbursable Fund	\$ 351,170	\$ 438,718	\$ 457,648	\$ 18,930	4.3%
Total Funds	\$ 23,332,473	\$ 26,278,630	\$ 28,148,121	\$ 1,869,491	7.1%

Note: The fiscal 2009 appropriation does not include deficiencies. The fiscal 2010 allowance does not include contingent reductions.