

M00B0104
Health Occupation Boards
 Department of Health and Mental Hygiene

Operating Budget Data

(\$ in Thousands)

	<u>FY 11</u> <u>Actual</u>	<u>FY 12</u> <u>Working</u>	<u>FY 13</u> <u>Allowance</u>	<u>FY 12-13</u> <u>Change</u>	<u>% Change</u> <u>Prior Year</u>
General Fund	\$309	\$324	\$389	\$65	20.1%
Adjusted General Fund	\$309	\$324	\$389	\$65	20.1%
Special Fund	25,521	28,019	29,618	1,600	5.7%
Adjusted Special Fund	\$25,521	\$28,019	\$29,618	\$1,600	5.7%
Reimbursable Fund	400	440	470	30	6.9%
Adjusted Reimbursable Fund	\$400	\$440	\$470	\$30	6.9%
Adjusted Grand Total	\$26,230	\$28,782	\$30,477	\$1,695	5.9%

- The fiscal 2013 allowance is \$1.7 million greater than the 2012 working appropriation.
- The boards collect special funds through licensing fees. Special funds grow by 5.7%, or \$1.6 million, due mainly to increased personnel expenses and assigned operating expenses for things such as the State Personnel System, the Office of the Attorney General, and a Retirement Administrative fee.

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

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Personnel Data

	<u>FY 11 Actual</u>	<u>FY 12 Working</u>	<u>FY 13 Allowance</u>	<u>FY 12-13 Change</u>
Regular Positions	247.10	250.70	260.20	9.50
Contractual FTEs	<u>15.99</u>	<u>11.60</u>	<u>18.40</u>	<u>6.80</u>
Total Personnel	263.09	262.30	278.60	16.30

Vacancy Data: Regular Positions

Turnover and Necessary Vacancies, Excluding New Positions	10.45	4.16%
Positions and Percentage Vacant as of 12/31/11	17.50	6.98%

- The fiscal 2013 allowance includes an additional 9.5 regular positions.
- The Board of Nursing and the Board of Physicians each receive an additional 3.0 positions. The Board of Pharmacy, the Board of Professional Counselors and Therapists, and the Board of Social Work Examiners receive an additional 1.0 position each. The Board of Residential Childcare Program Professionals also receives a 0.5 increase in regular positions.
- The Board of Nursing receives 7.0 additional full-time equivalent (FTE) contractual employees. This increase is offset by reductions to part-time contractual employees at the Board of Physicians (0.2 FTEs).

Analysis in Brief

Major Trends

Boards Are Able to Meet Processing Goals for Licensees: In fiscal 2011, all but one of the boards met their goals for processing licenses in a timely manner. The total number of licenses issued in fiscal 2011 ranges from 100,794 by the Board of Nursing to 66 by the Board of Residential Child Care Program Professionals.

Complaint Processing: In fiscal 2011, 2 of the 19 boards were not able to process complaints according to their respective target timeframes.

Issues

Health Occupations Boards Sunset Reviews: Three health occupation boards underwent a full sunset evaluation. They include the following boards: Nursing, Pharmacy, and Physicians. **The Department of Legislative Services (DLS) recommended extending the termination date for the both the Board of Nursing and the Board of Pharmacy 10 years, to July 1, 2023. DLS also recommended that the termination date for the Board of Physicians be extended only one year to July 1, 2014.**

Legislative Directives Regarding the Boards' Disciplinary Processes: The Task Force on Discipline of Health Care Professionals and Improved Patient Care was created in accordance with Chapter 212 of 2008, and Chapters 533 and 534 of 2010 which codified the recommendations of the task force. By December 31, 2011, each board was required to report on its success in meeting the goals and requirements of the Acts, as well as ways in which separation of the board's disciplinary functions can be further achieved.

Recommended Actions

	<u>Funds</u>	<u>Positions</u>
1. Reduce funding for out-of-state conferences/seminars to align spending with the fiscal 2012 working appropriation.	\$ 135,706	
2. Delete 3.0 new positions at the Board of Nursing and 1.0 new position at the Board of Physicians.	144,752	4.0
3. Add language to restrict funding until the Board of Physicians promulgates in regulations sanctioning guidelines for physicians and allied health professionals.		
Total Reductions	\$ 280,458	4.0

Updates

Preliminary Sunset Reports for Two Health Boards: Two health occupation boards underwent a preliminary sunset evaluation. These include the Board of Social Work Examiners and the Board of Residential Child Care Program Professionals. **DLS recommended waiving both boards from full evaluation.**

Repeat Audit Findings: The Office of Legislative Audits audited the Health Occupation Boards for the period beginning February 1, 2008, and ending August 2, 2010. The audit revealed that certain boards had not established adequate control and accountability over licenses and related cash receipts, the Board of Nursing did not have a complete disaster recovery plan, and controls over the licensing database were not sufficient. Similar findings were commented upon in the board's preceding audit report.

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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 2010 and 2011. The total number of licenses issued in fiscal 2011 ranges from 100,794 by the Board of Nursing to 66 by the Board of Residential Child Care Program Professionals.

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. With the exception of one board, all boards met their respective targets in fiscal 2011 for issuing licenses in a timely manner. Only the Board of Pharmacy failed to meet its goal for renewal of licenses. The board aims to issue 100% of renewal licenses within three days, and in fiscal 2011, 95% of renewal licenses were issued in this timeframe.

Exhibit 1
Licenses Processed
Fiscal 2010-2011

<u>Board/Commission</u>	<u>2010</u>	<u>2011</u>
Nurses	100,371	100,794
Physicians*	16,981	25,332
Social Work	5,758	6,515
Pharmacy	4,897	4,364
Dental Examiners	4,128	10,200
Physical Therapy Examiners	3,421	3,422
AUD/HAD/SLP*	3,344	762
Occupational Therapists	3,075	3,367
Professional Counselors and Therapists	2,157	3,167
Psychologists	1,351	1,316
Chiropractic Examiners	1,211	3,969
Morticians	990	990
Dietetic Practice	738	797
Podiatric	463	517
Acupuncture	409	471
Nursing Home Administrators	261	262
Optometry	144	774
Kidney Disease	129	249
Residential Child Care Program Professionals	126	66

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

*The Board of AUD/HAD/SLP renews every two years, and several allied health practitioners licensed by the Board of Physician are also on a biennial renewal cycle.

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. Two of the 19 boards were not able to process complaints according to their respective target timeframes, as shown in **Exhibit 2**. The chart shows the total number of complaints, the goals that the boards have for timely complaint resolution, and the percentage of complaints that were actually processed according to their goals.

Exhibit 2
Complaints Not Processed in a Timely Manner
Fiscal 2010-2011

<u>Board/Commission</u>	<u>Complaints Investigated</u>	<u>Goal</u>	<u>2010</u>	<u>2011</u>
AUD/HAD/SLP	32	100% in 180 days	76%	88%
Chiropractic	63	100% in 180 days	98%	98%

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

Source: Department of Health and Mental Hygiene

Fiscal 2012 Actions

Section 47 of the fiscal 2012 budget bill required the Governor to abolish 450 positions as of January 1, 2012. This agency's share of the reduction was 2.0 positions. The annualized salary savings due to the abolition of these positions is expected to be \$61,293 in special funds.

Proposed Budget

As shown in **Exhibit 3**, the fiscal 2013 allowance is \$1.7 million more than the fiscal 2012 working appropriation. Since the boards are almost completely funded with special funds, with the exception of the State Board of Nursing Home Administrators and the State Board of Child Care Program Professionals, the special fund increases total \$1.6 million. General funds and reimbursable funds increase by \$65,000 and \$30,000, respectively.

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

How Much It Grows:	General Fund	Special Fund	Reimb. Fund	Total
2012 Working Appropriation	\$324	\$28,019	\$440	\$28,782
2013 Allowance	<u>389</u>	<u>29,618</u>	<u>470</u>	<u>30,477</u>
Amount Change	\$65	\$1,600	\$30	\$1,695
Percent Change	20.1%	5.7%	6.9%	5.9%
 Contingent Reductions	 \$0	 \$0	 \$0	 \$0
Adjusted Change	\$65	\$1,600	\$30	\$1,695
Adjusted Percent Change	20.1%	5.7%	6.9%	5.9%

Where It Goes:

Personnel Expenses

9.5 new positions.....	\$452
Employee and retiree health insurance.....	161
Retirement contributions.....	101
Miscellaneous adjustments.....	8
Other fringe benefit adjustments.....	3
Workers' compensation premium assessment.....	-6
Additional assistance.....	-19
Social Security contributions.....	-41
Turnover adjustments.....	-65
Regular salaries.....	-101
Removal of fiscal 2012 one-time \$750 bonus.....	-177

Cost Allocations

Attorney General administrative fee.....	249
Statewide personnel system allocation.....	129
Retirement administrative fee.....	34

Other Changes

Database maintenance at the Board of Nursing and the Board of Dental Examiners.....	261
Legal services.....	248
Contractual employee expenses (6.8 new FTEs).....	231
Increased travel costs for out-of-state conferences and in-state travel.....	188

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Where It Goes:

Increased rent costs	122
Printing costs at the Board of Pharmacy	89
Postage costs	-24
Increased contractual turnover	-38
Removal of one-time motor vehicle purchase.....	-45
Other changes.....	-65
Total	\$1,695

FTE: full-time equivalent

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

Personnel

Personnel expenditures increase by \$316,000 in fiscal 2013, primarily due to new positions (\$452,000). Employee and retiree health insurance expenses increase by \$161,000, and employee retirement contributions increase by \$101,000. Miscellaneous adjustments and other fringe benefits also increase by \$8,000 and \$3,000, respectively. These increases are offset by decreases in workers' compensation (\$6,000), additional assistance (\$19,000), Social Security contributions (\$41,000), and increased turnover adjustments (\$65,000). Regular earnings decreased due to the annualized savings from previously abolished positions (\$101,000). Finally, personnel expenses also decrease due to the removal of the fiscal 2012 one-time \$750 bonus (\$177,000).

Board of Nursing

Within the total of 9.5 additional regular positions in the 2013 allowance, the Board of Nursing receives 3.0 positions including 1 administrative specialist position and 2 computer network specialist positions. The computer network specialists will assist current information technology (IT) staff with importing the results of criminal history records checks into the board's licensure database. The administrative specialist will assist with processing criminal history records checks for medication technicians; however, the board currently does not have the statutory authority to require medication technicians to submit to criminal history records checks.

In the board's sunset evaluation, the Department of Legislative Services (DLS) recommended that the board should delay seeking legislation to require medication technicians to submit to criminal history records checks until the board has implemented an online certification process for medication technicians and analyzed the effectiveness of the current criminal history self-disclosure policy for medication technicians. Furthermore, the sunset evaluation recommended that the board contract with an independent entity to perform a personnel study to determine if and where additional staffing was needed as the board was unable to provide data to justify the need for additional staff. The board does not regularly run data reports to assess and manage ongoing workloads. Additionally, the board continues to undergo significant changes that will impact its staffing needs, such as transition to a

paperless application process and transition to biennial licensure renewal. **Therefore, DLS is recommending that the committees delete funding for these 3.0 new positions due to the findings in the board’s sunset evaluation.**

Contractual payroll also increases by \$231,000. The Board of Nursing receives an additional 7.0 full-time equivalent contractual employees. Two of the contractual positions are included in the board’s budget to comply with findings in the board’s most recent legislative audit. This includes a computer information services specialist to improve the board’s compliance with State IT security guidelines and a fiscal account clerk to ensure duties related to preparing deposits and reconciling Financial Management Information System (FMIS) transactions are separate.¹ Four office service clerks are included to answer the main telephone line for the nursing division and the nursing assistant division of the board. These increases are offset by a reduction in part-time contractual positions at the Board of Physicians (0.2).

Board of Physicians

The Board of Physicians also receives an additional 3.0 positions including 1.0 compliance analyst and 2.0 administrative positions. The board has indicated that the compliance analyst position is needed to process complaints more expeditiously. The board has a growing backlog of cases that remain unresolved, and it frequently cites the number of compliance analysts and high average caseload per analyst in explaining the growing backlog of cases; however, in the board’s sunset evaluation, it was noted that the average caseload was approximately 37 cases per analyst. While that amount is above the optimal caseload of 25, the average caseload per analyst has actually decreased from 56 in 2005. Despite more analysts and a lower average caseload, the backlog of cases and the length of time it takes for a full investigation to be completed continue to increase. Subsequently, in the board’s sunset evaluation, DLS recommended that uncodified language should be adopted requiring the board and DHMH jointly to develop and implement a strategy for reducing the backlog of complaint cases by December 31, 2012. **Therefore, DLS is recommending that the committees delete funding for this new position since it is unclear whether an additional compliance analyst will have any effect on reducing the backlog of cases.**

One new administrative position will support the licensure of athletic trainers and perfusionists. These two fields will add about 600 new licensees and two committees to the board. This position will also assist with the regulation of the physician assistant program. The second administrative position will assist with the processing of initial physician licenses. Presently, a member of the board’s IT staff is assisting with these tasks.

Other Boards

The Board of Professional Counselors and Therapists added a health occupations investigator to investigate complaints. In prior years, these duties were handled by a contractual employee; however, investigating complaints is an ongoing duty of the board. The Board of Pharmacy added a

¹ Additional information regarding the board’s most recent audit can be found in the Updates section of this document.

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computer information specialist to support the board's IT functions, and the Board of Social Work Examiners added 1.0 position to provide clerical support to its Licensing Unit. These duties have been performed at the contractual level for several years. Finally, the Board of Residential Child Care Program Professionals receives 0.5 positions to administer statutory mandates including, certification, disciplinary, regulatory, legislative, and fiscal duties.

Cost Allocations and Other Changes

Cost allocations increase the budget for the health boards by \$412,000. These increases are assigned charges including an Office of the Attorney General administrative fee (\$249,000), a statewide personnel system allocation fee (\$129,000), and a retirement administration fee (\$34,000).

The fiscal 2013 allowance also includes an additional \$248,000 for legal services. This is largely attributable to increased costs at the Board of Dental Examiners, the Board of Morticians, and the Board of Pharmacy. The budget increases by \$188,000 for travel costs, including \$136,000 for out-of-state conferences and seminars. Other increases in costs include additional funding for database maintenance at the Board of Nursing and the Board of Dental Examiners (\$261,000), as well as rent (\$122,000) and printing costs at the Board of Pharmacy (\$89,000). These increases are offset by a decrease in costs for postage (\$24,000), increased contractual turnover (\$38,000), and the removal of funds for a one-time motor vehicle purchase in fiscal 2012 (\$45,000).

Fiscal 2013 Fund Balance Transfers

The Budget Reconciliation and Financing Act (BRFA) of 2012 also proposes \$426,529 in fund balance transfers from four boards in fiscal 2013. This includes \$241,036 from the Board of Occupational Therapy Practice; \$96,350 from the Board of Audiologists, Hearing Aid Dispensers, and Speech-Language Pathologists; \$79,356 from the Board of Podiatric Medical Examiners; and \$9,788 from the Board of Morticians and Funeral Directors. The impact of these transfers is shown in **Exhibit 4. Appendix 3** shows the cumulative effects of the fiscal 2010 through 2013 transfers on the fund balances of the boards.

Exhibit 4
Impact of Fiscal 2013 Fund Balance Transfers

	Occupational Therapy Practice	Audiologists, Hearing Aid Dispensers, and Speech-Language Pathologists	Podiatric Medical Examiners	Morticians and Funeral Directors
Fiscal 2013 Beginning Balance	\$329,158	\$456,681	\$235,748	\$300,679
Income	550,000	90,000	275,000	378,100
Expenditures	-518,342	-365,855	-350,036	-559,169
BRFA Transfer	-\$241,036	-\$96,350	-\$79,356	-\$9,788
Fiscal 2013 Ending Balance	119,780	84,476	81,356	109,822
Fund Balance as a % of Expenditures	23.1%	23.1%	23.2%	19.6%

BRFA: Budget Reconciliation and Financing Act

Source: Department of Health and Mental Hygiene

Issues

1. Health Occupations Boards Sunset Reviews

Maryland's 18 health occupations boards have regulatory authority over more than 385,000 health care professionals. The boards protect the public by ensuring that health care professionals are properly licensed and also investigate and resolve complaints about regulated professionals. The boards are subject to the periodic evaluation and reestablishment provisions of the Maryland Program Evaluation Act (sunset law) and, in recent years, have come under greater scrutiny by the General Assembly regarding their disciplinary processes.

Full Sunset Evaluations of Three Boards Conducted in 2011

As required by the Maryland Program Evaluation Act, DLS performed full sunset evaluations of three health occupations boards in 2011 – the State boards of Physicians, Nursing, and Pharmacy. Each board is scheduled to terminate on July 1, 2013, and legislation must be enacted to extend the boards' termination dates and implement any of DLS' statutory recommendations that are adopted by the General Assembly.

State Board of Physicians

DLS finds that the board has dedicated members, continues to process licenses proficiently, and has sufficient funds to support its activities. However, significant challenges face the board, including a growing backlog of complaints, an ongoing increase in the timeline for complaint resolution, balancing the need for transparency with the needs of licensees, and optimizing board resources. Unfortunately, the board has failed to implement key recommendations and requirements from previous sunset evaluations and currently fails to comply with statutory requirements in several areas, such as public disclosure of board filing of charges and the Opening Meetings Act. The board failed to adopt regulations when required by law and has not updated regulations to be consistent with current board practice.

In total, DLS offers 46 recommendations to improve the operations of the board, including that budget language be added during the 2012 legislative session to withhold funds from the board until it has adopted sanctioning guidelines. Although Chapters 533 and 534 of 2010 require all health occupations boards to adopt sanctioning guidelines, the recommendation that the board adopt guidelines dates back to 2003 when the Office of the Attorney General recommended that the board adopt guidelines. It is unclear why the board has been unable to adopt sanctioning guidelines in a timely manner in the eight-year period since sanctioning guidelines were first recommended for the board. **In accordance with the board's sunset evaluation, DLS is recommending that the committees add budget bill language that restricts \$1.0 million of the Board of Physicians' appropriation until the board promulgates sanctioning guidelines for physicians and allied health professionals, as required by Chapters 533 and 534 of 2010.**

Additional recommendations made by DLS noted that the board assess its fee-charging practices and develop a long-term fiscal plan and that the board and DHMH jointly develop and implement a strategy for reducing the backlog of complaint cases. Based on prior performance, DLS has significant concerns about whether the board will comply with these sunset recommendations. **Therefore, DLS recommends that the termination date for the board and the related allied health advisory committees be extended by only one year to July 1, 2014, and that DLS be required to make a recommendation on further extension of the board based on the progress of the board in complying with the recommendations of this report and the submission of a follow-up report by the board.**

State Board of Nursing

DLS finds that there is a continued need for the board and recommends that its termination date be extended by 10 years. The board's workload has increased significantly since 2001, due to expanded licensure and certification responsibilities (the board now regulates more than two-thirds of all health care professionals in the State) and the implementation of a criminal history records check requirement. The board has responded relatively well to its expanded workload, but additional improvements are needed, particularly related to the collection of data, the backlog of certified medication technician applications, customer service, and public access to information.

In total, DLS offers 25 recommendations to make the board run more efficiently and improve its relationship with the individuals it regulates and the public. Recommendations require the board to contract with an independent entity to perform a personnel study; enhance its annual report; include a certified medication technician on the Nursing Assistant Advisory Committee; and report to the General Assembly on implementation of sanctioning guidelines. Several administrative recommendations are made related to customer service, cross-training, communication among personnel, website design, the maintenance and organization of data and administrative materials, and the criminal history records check and complaint review processes. **Therefore, DLS recommends extending the termination date for the Board of Nursing 10 years, to July 1, 2023.**

House Bill 395 of 2012 implements DLS' recommendations.

State Board of Pharmacy

DLS finds that there is a continued need for regulation of the pharmacy industry and recommends that the board's termination date be extended by 10 years. In recent years, the board has dealt admirably with significantly expanded duties associated with the regulation of an industry that continues to grow at a rapid rate. Nonetheless, DLS identified specific issues that are affecting the board and makes 15 recommendations to enhance the board's efficiency and accountability, including that the board expand its use of Managing for Results goals; establish a formal process for information-sharing with DHMH's Division of Drug Control; seek reclassification of certain positions to enhance staff retention; and report to specified committees of the General Assembly on the board's implementation of sanctioning guidelines and the status of the board's contractual relationship with the Pharmacists' Education and Advocacy Council.

DLS also found that the Drug Therapy Management Program, which is regulated jointly by the board and the State Board of Physicians, has been underutilized due in part to an onerous administrative process. Thus, DLS recommends amending statute to remove potential barriers to participation and align the program with the policies of other Maryland health occupations boards and drug therapy management programs in other states. **Therefore, DLS recommends extending the termination date for the Board of Pharmacy 10 years, to July 1, 2023.**

House Bill 283/Senate Bill 274 of 2012 implements DLS' recommendations.

2. Legislative Directives Regarding the Boards' Disciplinary Processes

Chapter 212 of 2008 created the Task Force on the Discipline of Health Care Professionals and Improved Patient Care to issue recommendations regarding practices and procedures supporting the fundamental goals and objectives of the disciplinary programs of the boards and on measures to enhance the fair, consistent, and speedy resolution of complaints concerning substandard, illegal, or unethical practices by health care professionals. The task force issued a series of recommendations for standardizing and improving board operations in 2009, most of which were codified under Chapters 533 and 534 of 2010.

Chapters 533 and 534 set standardized guidelines for all health occupations boards regarding disciplinary processes, board membership, and administrative matters. Among the requirements, the Acts required that all boards:

- adopt sanctioning guidelines;
- establish a six-year statute of limitations on the bringing of charges against a licensee except under specified circumstances;
- post final public orders on their websites;
- establish a disciplinary subcommittee;
- notify licensees when there is a board vacancy;
- develop a training process and materials for new board members; and
- collect racial and ethnic information about applicants.

By December 31, 2011, each board was required to report its success in meeting the goals and requirements of the Acts, as well as ways in which separation of the boards' disciplinary functions can be further achieved. By October 1, 2012, the Secretary of Health and Mental Hygiene must establish and report to the General Assembly on goals for the timeliness of complaint resolution.

Additional information on the status of the board's implementation of Chapters 533 and 534 was provided to the General Assembly in a report issued by the department in January 2012.

Report Summary

According to DHMH, several of the boards were already largely in compliance with the requirements of Chapters 533 and 534, while others have worked to improve their compliance since passage of the Acts in 2010. All of the larger boards have established disciplinary subcommittees, and revised training materials have been developed for new board members.² With the exception of the Board of Pharmacy, all boards collect racial and ethnic information regarding applicants for licensure, certification, and renewal. The Board of Pharmacy will begin collecting racial and ethnic data when it implements its new database in fiscal 2012. Additionally, all boards have met the following requirements:

- notify licensees of a board vacancy;
- provide new board members with cultural competency training; and
- post final public orders for disciplinary sanctions on the board's website.

A total of 13 health occupations boards – Acupuncture, Audiologists, Hearing Aid Dispensers, and Speech-Language Pathologists; Chiropractic and Massage Therapy Examiners; Dental Examiners; Dietetic Practice; Examiners of Psychologists; Examiners of Nursing Home Administrators; Nursing; Occupational Therapy; Social Work Examiners; Physical Therapy Examiners; and Podiatric Medical Examiners – have submitted regulations for sanctioning guidelines to the Joint Committee on Administrative, Executive, and Legislative Review. The State Board for Certification of Residential Child Care Program Professionals, the State Board of Physicians, and the Board of Morticians and Funeral Directors have developed but not yet submitted such guidelines. Other boards are anticipated to submit such regulations in the near future. The Board of Examiners in Optometry, the Board of Pharmacy, and the Board of Professional Counselors and Therapists are in the process of developing sanctioning guidelines.

Additional Separation of Disciplinary Functions

In order to address the ways in which separation of the board's disciplinary functions could be further achieved, the boards discussed and examined the possibility of grouping board investigators together in a single unit and allowing each investigator to specialize in investigating certain types of violations, such as fraud or sexual misconduct, rather than the current arrangement whereby each board employs an investigative staff to look into complaints solely for that board. This idea was

² The Board of Dietetic Practice, the Board of Podiatric Medical Examiners, and the Board of Examiners of Psychologists do not have disciplinary committees as they use a liaison system and the full board to process and handle complaints. The Board of Physical Therapy Examiners does not have a disciplinary committee established and has indicated that it is not feasible to establish a committee due to the size of the board. All other health boards have established disciplinary committees.

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ultimately rejected because it is more feasible for an investigator to work under a single board, or a few boards, to become more familiar with the statutes and regulations of their respective board, instead of having to learn the statute and regulations of all boards, which differ greatly.

A few boards also reported unintended consequences of the legislation. For instance, the Board of Pharmacy and the Board of Examiners of Psychologists both reported receiving pushback from licensees about posting final orders on the respective board's website. In particular, the Board of Pharmacy has received complaints concerning public orders dating back to 1979 being posted online as licensees believe there should be a time limit on posting such orders, especially once conditions have been fulfilled and disciplinary actions have been lifted. The Board of Examiners of Audiologists, Hearing Aid Dispensers, and Speech-Language Pathologists discovered that its Disciplinary Case Review Committee arrangement resulted in some individuals under the board's jurisdiction not being notified of a complaint against them until the complaint was dismissed by the full board due to the complaint being baseless. This has happened in an isolated number of cases, and the board is taken steps to remedy this situation.

The department should comment on efforts it is taking to ensure that all health occupations boards are complying with the requirements of Chapters 533 and 534 of 2010.

Recommended Actions

	<u>Amount Reduction</u>		<u>Position Reduction</u>
1. Reduce funding for out-of-state conferences/seminars to align spending with the fiscal 2012 working appropriation.	\$ 1,847	GF	
	\$ 133,859	SF	
2. Delete 3.0 new positions at the Board of Nursing and 1.0 new position at the Board of Physicians.	144,752	SF	4.0
3. Add the following language to the special fund appropriation:			

provided that \$1,000,000 of this appropriation made for the purpose of the Board of Physicians, may not be expended until the Department of Health and Mental Hygiene promulgates in regulations sanctioning guidelines for physicians and allied health professionals, as required by Chapters 533 and 534 of 2010, and reports to the budget committees that sanctioning guidelines have been approved by the Joint Committee on Administrative, Executive, and Legislative Review. Funds restricted pending the receipt of a report may not be transferred by budget amendment or otherwise to any other purpose and shall be cancelled if the report is not submitted to the budget committees.

Explanation: Although Chapters 533 and 534 of 2010 require all health occupations boards to adopt sanctioning guidelines, the recommendation that the board adopt guidelines dates back to 2003 when the Office of the Attorney General recommended that the board adopt guidelines. It is unclear why the board has been unable to adopt sanctioning guidelines in a timely manner in the eight-year period since sanctioning guidelines were first recommended for the board. This recommendation is made in accordance with recommendations made by the Department of Legislative Services in the board's 2011 sunset evaluation.

Information Request	Author	Due Date
Report that sanctioning guidelines for physicians and allied health professionals have been approved by the Joint Committee on Administrative, Executive, and Legislative Review	Department of Health and Mental Hygiene	Date that sanctioning guidelines are approved by the Joint Committee on Administrative, Executive, and Legislative Review

Total Reductions	\$ 280,458	4.0
Total General Fund Reductions	\$ 1,847	
Total Special Fund Reductions	\$ 278,611	

Updates

1. Preliminary Sunset Reports for Two Health Boards

Two of the health boards underwent a preliminary sunset evaluation: (1) Residential Child Care Program Professionals, and (2) Social Work Examiners. DLS recommended waiving both boards from full evaluation and enacting legislation to extend the termination date for both boards by 10 years to July 1, 2024.

Board of Residential Child Care Program Professionals

DLS found that the board appears to function well, is aware of and responds to legislative changes in a timely fashion, works well with industry associations, and addresses questions from program administrators. Board membership currently represents relevant parties.

A few issues were raised in the evaluation. Of potential concern was whether residential child and youth care practitioners will be underrepresented on the board once their certification process is implemented, given that there will be only one practitioner member for an estimated 2,350 certificate holders. Furthermore, the certification process for practitioners is in a state of flux. Chapters 219 and 220 of 2011 required a summer study to examine the process, including allowing the board to waive fees; developing a minimum salary structure based on the increased requirements of certification; altering initial and annual training requirements; and developing a uniform framework for practitioner training programs to be made available through a free online webinar format. If and how the recommendations of the summer study workgroup will be implemented and how they may impact the regulation of residential child and youth care practitioners remains unclear.

In addition, DLS recommended that the board submit a follow-up report to the policy committees by October 1 of each year beginning in 2013 until the certification of residential child and youth care practitioners is fully implemented (a full biennial certification cycle). In the final report submitted, the board should also address the following:

- the outlook for the board to be self-supporting in the future (special funded) following the implementation of the certification of residential child and youth care practitioners, based on certification levels, additional full-time equivalent and contractual staff support, and revenue and expenditure patterns; and
- the need for further changes to board membership based on the volume of certified practitioners.

House Bill 73/Senate Bill 95 of 2012 implements DLS' recommendations as adopted by the Legislative Policy Committee (LPC) at its December 13, 2011 meeting.

Board of Social Work Examiners

DLS found that the board is sufficiently meeting its mandated duties, including efficiently issuing licenses and taking disciplinary actions when warranted. Since the last sunset evaluation of the board in 2002, the board has improved data collection, provided staff training, filled vacant positions in a timely fashion, and improved the relationship between board staff and members. The board's website has improved, and social workers have been educated on self-reporting of disciplinary violations. The board has also improved its financial forecasting. In addition, DLS recommended that the board submit a follow-up report by October 1, 2013, to address a handful of administrative issues raised in the evaluation that includes:

- an analysis of the licensed social work associate licensing trends and options for promoting the number of individuals seeking this level of licensure;
- an update on licensing fees, including a long-term financial plan in order to ensure a sufficient fund balance; and
- an update on the disciplinary process, including outreach efforts and efforts to meet the board's Managing for Results goals.

House Bill 72/Senate Bill 94 of 2012 implements DLS' recommendations as adopted by LPC at its December 13, 2011 meeting.

2. Repeat Audit Findings

The Office of Legislative Audits (OLA) audited the Health Occupation Boards for the period beginning February 1, 2008, and ending August 2, 2010. The audit revealed that certain boards had not established adequate control and accountability over licenses and related cash receipts, the Board of Nursing did not have a complete disaster recovery plan, and controls over its licensing database were not sufficient. Similar findings were commented upon in the board's preceding audit report.

More specifically, the Board of Nursing and the Board of Pharmacy had not established sufficient controls over the accounting for professional licenses and related collections. Due to the lack of adequate controls, an employee at the Board of Nursing could misappropriate cash receipts without detection. The lack of adequate deposit verifications by certain boards has been commented upon in OLA's reports dating back to 2002. Furthermore, both the Board of Pharmacy and the Board of Nursing had not reconciled the value of licenses issued with related collections. The lack of such reconciliations by certain boards has been commented upon in OLA reports dating back to 1983, including the Board of Nursing since 1987. This contributed to the failure of the board to detect in a timely manner the apparent fraudulent sale and distribution certified nursing certificates.

OLA recommended that, among other things, both the Board of Pharmacy and the Board of Nursing establish adequate procedures to ensure that an employee independent of the collections

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verifies that all amounts received are deposited and recorded in the State's accounting records. In order to address this recommendation, new processes have been established at the Board of Nursing, and additional contractual employees are included in the fiscal 2013 allowance to meet this recommendation. The Board of Pharmacy has filled its Licensing Unit Manager and reinstated procedures for verifying that all licenses are paid for. This position had been vacant for a significant period of time before and during the audit period and contributed to the board's failure to account for collections.

In addition, the Board of Nursing did not have a complete disaster recovery plan, and controls over the licensing database were not sufficient. Among other things, auditing capabilities were not enabled for the licensing database. Subsequently, unauthorized or inappropriate activities affecting the integrity of the production database information could occur and not be detected by management. This was also disclosed in the board's preceding audit report. Furthermore, database account and password controls were not in compliance with the Department of Information Technology's *Information Security Policy*. In order to address this recommendation, additional contractual employees have been included in the board's fiscal 2013 allowance.

Current and Prior Year Budgets

Current and Prior Year Budgets DHMH – Health Occupation Boards (\$ in Thousands)

	<u>General Fund</u>	<u>Special Fund</u>	<u>Federal Fund</u>	<u>Reimb. Fund</u>	<u>Total</u>
Fiscal 2011					
Legislative Appropriation	\$327	\$26,925	\$0	\$463	\$27,714
Deficiency Appropriation	0	367	0	0	367
Budget Amendments	-18	523	0	0	506
Reversions and Cancellations	0	-2,294	0	-62	-2,356
Actual Expenditures	\$309	\$25,521	\$0	\$400	\$26,230
Fiscal 2012					
Legislative Appropriation	\$322	\$27,844	\$0	\$440	\$28,605
Budget Amendments	2	175	0	0	177
Working Appropriation	\$324	\$28,019	\$0	\$440	\$28,782

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

Fiscal 2011

The budget for the Health Professional Boards and Commission (boards) closed at \$26.2 million in fiscal 2011, \$1.5 million below 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 Program Professionals which are both funded with general funds.

Budget amendments over the course of fiscal 2011 increased the budget of the boards by approximately \$0.5 million. The amendments included an increase in funds to cover the costs of computer upgrades at the Board of Nursing (\$523,189 in special funds). General funds decreased by \$17,583 to realign funds within DHMH from programs with surpluses to those with deficits. Deficiency appropriations also increased the legislative appropriation by \$367,213 in special funds. Special funds were needed to improve the Board of Pharmacy's electronic database.

Finally, at the end of 2011, \$2.3 million in special funds and \$62,000 in reimbursable funds were cancelled due to reduced expenditures by the boards as a result of increased vacancies. It should also be noted that \$282,776 in special funds were transferred to the general fund by the BRFA of 2011. This includes \$237,776 from the Board of Pharmacy and \$44,888 from the Board of Examiners of Psychologists.

Fiscal 2012

The fiscal 2012 working appropriation is \$28.8 million, an increase of \$177,000 over the original legislative appropriation. The fiscal 2012 budget for the Department of Budget and Management included centrally budgeted funds for the \$750 one-time bonus for State employees. This resulted in the transfer of funds from the Department of Budget and Management to the health boards (\$2,261 in general funds and \$175,040 in special funds).

Audit Findings

Audit Period for Last Audit:	February 1, 2008 – August 2, 2010
Issue Date:	November 2011
Number of Findings:	3
Number of Repeat Findings:	2
% of Repeat Findings:	66.6%
Rating: (if applicable)	n/a

Finding 1: **Certain boards had not established sufficient controls over the accounting for professional licenses and related collections.**

Finding 2: The Board of Nursing’s contract with its licensing service vendor did not include provisions obligating the vendor to address certain significant information technology security and operational risks.

Finding 3: **The Board of Nursing did not have a complete disaster recovery plan, and controls over the licensing database were not sufficient.**

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

Impact of Fiscal 2010-2013 Fund Balance Transfers

	<u>Board of Physicians</u>	<u>Board of Nursing</u>	<u>Board of Pharmacy</u>	<u>Dental Board</u>	<u>Board of Social Workers</u>	<u>Chiropractic</u>	<u>Psychologists</u>
Fiscal 2010 Beginning Balance	\$5,590,521	\$1,884,048	\$926,215	\$942,102	\$197,221	\$517,268	\$334,432
Income	8,161,955	6,773,441	2,278,255	1,559,329	1,201,665	667,909	533,820
Expenditures	-7,443,296	-5,946,260	-2,034,492	-1,911,306	-1,166,518	-863,667	-558,866
Transfers to the General Fund	-1,027,895						
BRFA Transfer (Furlough Savings)	-\$527,619	-\$305,549	-\$98,544	-\$73,530	-\$52,097	-\$36,128	-\$23,718
Fiscal 2010 Ending Balance	\$4,753,666	\$2,405,680	\$1,071,434	\$516,595	\$180,261	\$285,382	\$285,668
Fund Balance as a Percent	63.9%	40.5%	52.7%	27.0%	15.5%	33.0%	51.1%
Fiscal 2011 Beginning Balance	\$4,753,666	\$2,405,680	\$1,071,434	\$516,595	\$180,261	\$285,382	\$285,668
Income	10,536,616	6,931,346	2,942,558	1,976,790	1,339,764	1,232,051	512,678
Expenditures	-7,800,646	-6,662,623	-2,322,902	-2,032,874	-1,256,949	-930,255	-549,332
Transfers to the General Fund	-1,404,737						
BRFA Transfer	-\$1,000,000	-\$403,328	-\$200,000				-\$50,000
Fiscal 2011 Ending Balance	\$5,084,899	\$2,271,098	\$1,491,090	\$460,511	\$263,076	\$587,178	\$199,014
Fund Balance as a Percent	65.2%	34.1%	64.2%	22.7%	20.9%	63.1%	36.2%
Fiscal 2012 Beginning Balance	\$5,084,899	\$2,271,098	\$1,491,090	\$460,511	\$263,076	\$587,178	\$199,014
Income	8,866,455	7,100,000	2,321,560	2,043,571	1,269,525	700,000	575,112
Expenditures	-8,690,376	-7,427,301	-2,630,396	-2,250,442	-1,386,627	-974,014	-649,099
Transfers to the General Fund	-1,063,975						
BRFA Transfer	-\$175,000	-\$26,000	-\$237,888				-\$44,888
Fiscal 2012 Ending Balance	\$4,022,003	\$1,917,797	\$944,366	\$253,640	\$145,974	\$313,164	\$80,139
Fund Balance as a Percent	46.3%	25.8%		11.3%	10.5%	32.2%	12.3%
Fiscal 2013 Beginning Balance	\$4,022,003	\$1,917,797	\$944,366	\$253,640	\$145,974	\$313,164	\$80,139
Income	9,418,185	7,100,000	2,651,535	2,388,799	1,358,235	980,000	620,000
Expenditures	-8,771,211	-7,971,806	-2,841,388	-2,541,197	-1,481,975	-1,039,313	-687,153
Transfers to the General Fund	-1,130,182						
BRFA Transfer							
Fiscal 2013 Ending Balance	\$3,538,795	\$1,045,991	\$754,513	\$101,242	\$22,234	\$253,851	\$12,986
Fund Balance as a Percent	40.3%	13.1%	26.6%	4.0%	1.5%	24.4%	1.9%

Impact of Fiscal 2010-2013 Fund Balance Transfers (Continued)

	<u>Professional Counselors</u>	<u>Physical Therapy</u>	<u>Audiologists</u>	<u>Occupation Therapy</u>	<u>Optometry</u>	<u>Acupuncture</u>	<u>Morticians</u>	<u>Podiatric</u>	<u>Kidney Disease</u>	<u>Dietetic</u>
Fiscal 2010 Beginning Balance	\$431,216	\$485,972	\$357,768	\$282,871	\$233,394	\$17,720	\$81,691	\$59,916	\$69,887	\$0
Income	442,987	803,657	399,149	216,223	88,994	212,041	588,180	330,536	144,668	198,214
Expenditures	-549,918	-754,327	-333,994	-429,153	-238,943	-190,510	-457,463	-232,027	-150,595	-189,818
Transfers to the General Fund										
BRFA Transfer										
(Furlough Savings)	-\$22,013	-\$17,567	-\$13,698	-\$11,923	-\$9,837	-\$9,666	-\$9,566	-\$7,283	-\$4,092	-\$3,738
Fiscal 2010 Ending Balance	\$302,272	\$517,735	\$409,225	\$58,018	\$73,608	\$29,585	\$202,842	\$151,142	\$59,868	\$4,658
Fund Balance as a Percent	55.0%	68.6%	122.5%	13.5%	30.8%	15.5%	44.3%	65.1%	39.8%	2.5%
Fiscal 2011 Beginning Balance	\$302,272	\$517,735	\$409,225	\$58,018	\$73,608	\$29,585	\$202,842	\$151,142	\$59,868	\$4,658
Income	649,264	791,781	181,724	556,466	446,749	243,031	386,177	278,143	145,995	215,634
Expenditures	-567,486	-893,679	-326,320	-446,480	-242,389	-235,489	-377,375	-210,222	-159,984	-206,093
Transfers to the General Fund										
BRFA Transfer	-\$50,000									
Fiscal 2011 Ending Balance	\$334,050	\$415,837	\$264,629	\$168,004	\$277,968	\$37,127	\$211,644	\$219,063	\$45,879	\$14,199
Fund Balance as a Percent	58.9%	46.5%	81.1%	37.6%	114.7%	15.8%	56.1%	104.2%	28.7%	6.9%
Fiscal 2012 Beginning Balance	\$334,050	\$415,837	\$264,629	\$168,004	\$277,968	\$37,127	\$211,644	\$219,063	\$45,879	\$14,199
Income	460,000	809,775	540,000	649,571	100,000	240,000	568,350	373,000	157,500	200,000
Expenditures	-641,407	-840,354	-347,948	-488,417	-245,918	-240,864	-479,315	-356,315	-182,658	-187,191
Transfers to the General Fund										
BRFA Transfer										
Fiscal 2012 Ending Balance	\$152,643	\$385,258	\$456,681	\$329,158	\$132,050	\$36,263	\$300,679	\$235,748	\$20,721	\$27,008
Fund Balance as a Percent	23.8%	45.8%	131.2%	67.4%	53.7%	15.1%	62.7%	66.2%	11.3%	14.4%
Fiscal 2013 Beginning Balance	\$152,643	\$385,258	\$456,681	\$329,158	\$132,050	\$36,263	\$300,679	\$235,748	\$20,721	\$27,008
Income	730,000	810,000	90,000	550,000	368,625	249,000	378,100	275,000	167,500	200,000
Expenditures	-716,136	-901,954	-365,855	-518,342	-258,079	-254,503	-559,169	-350,036	-165,238	-194,854
Transfers to the General Fund										
BRFA Transfer			-\$96,350	-\$241,036			-\$9,788	-\$79,356		
Fiscal 2013 Ending Balance	\$166,507	\$293,304	\$84,476	\$119,780	\$242,596	\$30,760	\$109,822	\$81,356	\$22,983	\$32,154
Fund Balance as a Percent	23.3%	32.5%	23.1%	23.1%	94.0%	12.1%	19.6%	23.2%	13.9%	16.5%

Note: Special funds from the Board of Physicians are annually transferred to the general fund to support scholarship programs.

Source: Department of Health and Mental Hygiene

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

<u>Object/Fund</u>	<u>FY 11 Actual</u>	<u>FY 12 Working Appropriation</u>	<u>FY 13 Allowance</u>	<u>FY 12 - FY 13 Amount Change</u>	<u>Percent Change</u>
Positions					
01 Regular	247.10	250.70	260.20	9.50	3.8%
02 Contractual	15.99	11.60	18.40	6.80	58.6%
Total Positions	263.09	262.30	278.60	16.30	6.2%
Objects					
01 Salaries and Wages	\$ 16,745,681	\$ 18,695,362	\$ 19,010,917	\$ 315,555	1.7%
02 Technical and Spec. Fees	1,328,573	1,616,720	1,905,053	288,333	17.8%
03 Communication	513,886	636,209	592,760	-43,449	-6.8%
04 Travel	239,605	287,819	475,976	188,157	65.4%
07 Motor Vehicles	51,023	58,511	15,375	-43,136	-73.7%
08 Contractual Services	5,126,216	5,661,029	6,510,996	849,967	15.0%
09 Supplies and Materials	297,134	300,967	315,891	14,924	5.0%
10 Equipment – Replacement	43,827	30,502	53,735	23,233	76.2%
11 Equipment – Additional	533,512	146,943	122,086	-24,857	-16.9%
12 Grants, Subsidies, and Contributions	0	25,000	24,000	-1,000	-4.0%
13 Fixed Charges	1,350,639	1,323,400	1,450,695	127,295	9.6%
Total Objects	\$ 26,230,096	\$ 28,782,462	\$ 30,477,484	\$ 1,695,022	5.9%
Funds					
01 General Fund	\$ 308,774	\$ 324,100	\$ 389,166	\$ 65,066	20.1%
03 Special Fund	25,521,098	28,018,642	29,618,209	1,599,567	5.7%
09 Reimbursable Fund	400,224	439,720	470,109	30,389	6.9%
Total Funds	\$ 26,230,096	\$ 28,782,462	\$ 30,477,484	\$ 1,695,022	5.9%

Note: The fiscal 2012 appropriation does not include deficiencies.

**Fiscal Summary
DHMH – Health Occupation Boards**

<u>Program/Unit</u>	<u>FY 11 Actual</u>	<u>FY 12 Wrk Approp</u>	<u>FY 13 Allowance</u>	<u>Change</u>	<u>FY 12 - FY 13 % Change</u>
04 Health Professional Boards and Commission	\$ 11,766,827	\$ 12,664,785	\$ 13,734,467	\$ 1,069,682	8.4%
05 Board of Nursing	6,662,623	7,427,301	7,971,806	544,505	7.3%
06 Maryland Board of Physicians	7,800,646	8,690,376	8,771,211	80,835	0.9%
Total Expenditures	\$ 26,230,096	\$ 28,782,462	\$ 30,477,484	\$ 1,695,022	5.9%
General Fund	\$ 308,774	\$ 324,100	\$ 389,166	\$ 65,066	20.1%
Special Fund	25,521,098	28,018,642	29,618,209	1,599,567	5.7%
Total Appropriations	\$ 25,829,872	\$ 28,342,742	\$ 30,007,375	\$ 1,664,633	5.9%
Reimbursable Fund	\$ 400,224	\$ 439,720	\$ 470,109	\$ 30,389	6.9%
Total Funds	\$ 26,230,096	\$ 28,782,462	\$ 30,477,484	\$ 1,695,022	5.9%

Note: The fiscal 2012 appropriation does not include deficiencies.