

**M00B0104**  
**Health Professional Boards and Commission**  
 Department of Health and Mental Hygiene

***Operating Budget Data***

(\$ in Thousands)

	<u>FY 12</u> <u>Actual</u>	<u>FY 13</u> <u>Working</u>	<u>FY 14</u> <u>Allowance</u>	<u>FY 13-14</u> <u>Change</u>	<u>% Change</u> <u>Prior Year</u>
General Fund	\$320	\$386	\$384	-\$3	-0.7%
<b>Adjusted General Fund</b>	<b>\$320</b>	<b>\$386</b>	<b>\$383</b>	<b>-\$3</b>	<b>-0.8%</b>
Special Fund	26,245	29,478	31,153	1,674	5.7%
Contingent & Back of Bill Reductions	0	0	-31	-31	
<b>Adjusted Special Fund</b>	<b>\$26,245</b>	<b>\$29,478</b>	<b>\$31,122</b>	<b>\$1,643</b>	<b>5.6%</b>
Reimbursable Fund	417	470	483	13	2.8%
<b>Adjusted Reimbursable Fund</b>	<b>\$417</b>	<b>\$470</b>	<b>\$483</b>	<b>\$13</b>	<b>2.8%</b>
<b>Adjusted Grand Total</b>	<b>\$26,981</b>	<b>\$30,335</b>	<b>\$31,988</b>	<b>\$1,653</b>	<b>5.4%</b>

- There are proposed deficiencies for fiscal 2013 for the Board of Nursing (\$1,071,281) and the Board of Physicians (\$600,000).
- The fiscal 2014 allowance is \$1.7 million greater than the 2013 working appropriation.
- The boards collect special funds through licensing fees. Special funds grow by 5.6%, or \$1.6 million, due mainly to increased personnel expenditures.

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

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***Personnel Data***

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	<b><u>FY 12 Actual</u></b>	<b><u>FY 13 Working</u></b>	<b><u>FY 14 Allowance</u></b>	<b><u>FY 13-14 Change</u></b>
Regular Positions	250.70	257.20	265.70	8.50
Contractual FTEs	<u>11.72</u>	<u>19.40</u>	<u>12.60</u>	<u>-6.80</u>
<b>Total Personnel</b>	<b>262.42</b>	<b>276.60</b>	<b>278.30</b>	<b>1.70</b>

***Vacancy Data: Regular Positions***

Turnover and Necessary Vacancies, Excluding New Positions	8.98	3.49%
Positions and Percentage Vacant as of 12/31/12	22.50	8.75%

- The fiscal 2014 allowance includes an additional 8.5 regular positions. The Board of Professional Counselors and Therapists, the Board of Dental Examiners, the Board of Morticians, and the Board of Physical Therapy Examiners each receive an additional position. The Board of Nursing (4.0) and the Board of Environmental Health Specialists (0.5) also receive additional positions.
- Full-time equivalent contractual positions decrease by 6.8 due to numerous contractual conversions.

## *Analysis in Brief*

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### Major Trends

**Boards Are Able to Meet Processing Goals for Licensees:** In fiscal 2012, all but one of the boards met their goals for processing licenses in a timely manner. The total number of licenses issued in fiscal 2012 ranges from 102,830 by the Board of Nursing to 24 by the Board of Environmental Health Specialists.

**Complaint Processing:** In fiscal 2012, 4 of the 20 boards were not able to process complaints according to their respective target timeframes.

### Issues

**Regulation of Compounding Pharmacies:** A recent outbreak of fungal meningitis, traced back to medications made by a Massachusetts compounding pharmacy, has prompted states and the federal government to review oversight of these entities. Legislation has been introduced to strengthen existing controls over compounding pharmacies.

**Board of Physicians Consultant's Report:** The 2011 sunset evaluation of the State Board of Physicians identified significant challenges facing the board relating to complaint resolution and other matters. At the direction of the Secretary of the Department of Health and Mental Hygiene (DHMH), the board engaged a consultant to conduct a review of the board. This issue examines recommendations in the consultant's report and compares them to the Department of Legislative Services' (DLS) recommendations.

**Child Support Enforcement Administration Audit – Electronic Exchange of Data:** A recent audit of the Child Support Enforcement Agency revealed that it has not fully established electronic exchanges of data with various State agencies for the purpose of license suspensions, including with the Health Professional Boards and Commission for various health occupations. This is a repeat finding within the most recent audit but requires compliance action from both the Child Support Enforcement Administration and the Health Professional Boards and Commission to be resolved. **DLS recommends withholding \$800,000 from the special fund appropriation of the boards until the electronic exchange of data on various health occupations is fully implemented such that it addresses the finding within the Department of Human Resources fiscal compliance audit.**

## Recommended Actions

	<u>Funds</u>
1. Add budget bill language to withhold special funds within the boards contingent upon the resolution of the Child Support Enforcement Administration audit finding.	
2. Add budget bill language to withhold special funds within the Board of Nursing contingent upon the resolution of the Child Support Enforcement Administration audit finding.	
3. Add language to the Board of Physician’s special fund appropriation to conform to statutory provisions regarding major information technology development project oversight.	
4. Reduce special funds in the board of Physicians to reflect reduced cost estimates for their integrated medical licensure and investigation software system.	\$ 91,000
5. Add language to the Board of Physician’s deficiency appropriation to conform to statutory provisions regarding major information technology development project oversight.	
6. Reduce the deficiency appropriation for the Board of Physicians to reflect reduced cost estimates for their integrated medical licensure and investigation software system.	468,000
<b>Total Reductions to Fiscal 2013 Deficiency Appropriation</b>	<b>\$ 468,000</b>
<b>Total Reductions to Allowance</b>	<b>\$ 91,000</b>

## Updates

***Preliminary Sunset Reports for Three Health Boards:*** Three health occupation boards underwent a preliminary sunset evaluation. These include the Board of Acupuncture, the Board of Dietetic Practice, and the Board of Occupational Therapy Practice. **DLS recommended waiving all three boards from full evaluation.**

***Budget Projections for Health Occupations Boards:*** The 2012 *Joint Chairmen’s Report* required DHMH, in conjunction with the health boards, to provide an assessment of the revenue projections of each board to ensure that projections are appropriate and adequate to support licensure and disciplinary activities of the boards in future years. The report indicated that a few boards will have to increase licensure fees in future years to support board operations.

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## ***Operating Budget Analysis***

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### **Program Description**

Within the Department of Health and Mental Hygiene (DHMH), there are 20 boards, including one 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**

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

The first goal of the boards is to protect the public by ensuring that licensees are properly credentialed. Each board has different procedures for issuing initial and renewal licenses. Some renew every two years, while others stagger renewals so 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 2011 and 2012. The total number of licenses issued in fiscal 2012 ranges from 102,830 by the Board of Nursing to 24 by the Board of Environmental Health Specialists.

The boards generally aim to process 100% of new licenses within 10 days of receipt of a complete application. Similarly, the boards aim to process 100% of licensure renewals within 5 days. With the exception of one board, all boards met their respective targets in fiscal 2012 for issuing licenses in a timely manner. The Board of Pharmacy failed to meet its goal for renewal of licenses, as only 95% of renewal licenses were issued within 5 days.

**Exhibit 1**  
**Licenses Processed**  
**Fiscal 2011-2012**

<u>Board/Commission</u>	<u>2011</u>	<u>2012</u>
Nurses*	100,794	102,830
Physicians*	25,332	18,592
Social Work Examiners*	6,515	6,300
Pharmacy*	4,364	4,632
Dental Examiners*	10,200	4,099
Physical Therapy Examiners*	3,422	3,520
AUD/HAD/SLP*	762	3,912
Occupational Therapists	3,367	3,380
Professional Counselors and Therapists*	3,167	1,978
Psychologists*	1,316	1,478
Chiropractic Examiners*	3,969	1,288
Morticians*	990	936
Dietetic Practice*	797	772
Podiatric	517	540
Acupuncture*	471	461
Nursing Home Administrators	262	275
Optometry*	774	128
Kidney Disease	114	115
Residential Child Care Program Professionals	66	46
Environmental Health Specialists	-	24

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

\*Boards with a biennial renewal cycle. Allied health practitioners licensed by the Board of Physicians are also on a biennial renewal cycle.

Source: Department of Mental Health

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## 2. Complaint Processing

The second 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. Four of the 20 boards were not able to process complaints within their respective timeframes, as shown in **Exhibit 2**. The chart shows the total number of complaints, the goals that the boards have for timely complaint resolution, and the percentage of complaints that were actually processed according to their goals.

**Exhibit 2**  
**Complaints Processed in a Timely Manner**  
**Fiscal 2012**

<u>Board/Commission</u>	<u>Complaints Investigated</u>	<u>Goal</u>	<u>2011</u>	<u>2012</u>
Chiropractic	52	100% in 180 days	98%	98%
Dental	121	100% in 180 days	95%	99%
Pharmacy	350	100% in 180 days	65%	90%
Social Work	99	100% in 180 days	92%	95%

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

Source: Department of Health and Mental Hygiene

## Fiscal 2013 Actions

### Proposed Deficiency

There are proposed deficiencies for fiscal 2013 for the Board of Nursing (\$1,071,281) and the Board of Physicians (\$600,000). The deficiency appropriation for the Board of Nursing is needed to support administrative costs and to address audit findings related to disaster recovery planning. Additional funding at the Board of Physicians is required to purchase a new integrated medical licensure and investigation software system. There is an estimated \$450,000 budgeted in fiscal 2014 to finance the adoption of this software system, making the total estimated cost \$1.0 million. However, the Board of Physicians has advised that program costs have been revised and only \$132,000 and \$359,000 is needed in fiscal 2013 and 2014, respectively. An additional \$359,000 will be required in fiscal 2015 to complete the project, bringing the total costs to \$850,000. The Department of Legislative Services (DLS) advises that the fluctuating costs of this project highlight the board’s lack of experience in procuring information technology (IT) systems. Moreover, this project supports a critical business function of the board and is necessary to protect public health in the State. **Therefore, DLS recommends that the new medical licensure and investigation IT system be considered a major IT development project as defined by State Finance and**

**Procurement Article Section 3A-301.** Moreover, DLS recommends that the fiscal 2013 deficiency and the 2014 appropriation be reduced by \$468,000 and \$91,000, respectively, to reflect reduced cost estimates provided by the board.

## Proposed Budget

As shown in **Exhibit 3**, the fiscal 2014 allowance is \$1.7 million more than the fiscal 2013 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 decrease by \$3,000, while reimbursable funds increase by \$13,000.

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

<b>How Much It Grows:</b>	<b><u>General</u> <u>Fund</u></b>	<b><u>Special</u> <u>Fund</u></b>	<b><u>Reimb.</u> <u>Fund</u></b>	<b><u>Total</u></b>
2013 Working Appropriation	\$386	\$29,478	\$470	\$30,335
2014 Allowance	<u>384</u>	<u>31,153</u>	<u>483</u>	<u>32,020</u>
Amount Change	-\$3	\$1,674	\$13	\$1,685
Percent Change	-0.7%	5.7%	2.8%	5.6%
 Contingent Reductions	 \$0	 -\$31	 \$0	 -\$32
Adjusted Change	-\$3	\$1,643	\$13	\$1,653
Adjusted Percent Change	-0.8%	5.6%	2.8%	5.4%

**Where It Goes:**

**Personnel Expenses**

New positions .....	\$442
Employee retirement.....	350
Employee and retiree health insurance .....	234
Annualized salary increase .....	156
Turnover adjustments .....	101
Workers' compensation .....	81
Accrued leave payout .....	39
Regular salaries.....	22

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**Where It Goes:**

Other fringe benefit adjustments .....	17
Social Security contributions .....	-4
Additional assistance .....	-54
<b>Board of Physicians</b>	
Other contractual services .....	153
Systems software acquisition.....	140
Physician Rehabilitation Program and peer review contractual services .....	83
<b>Other Changes</b>	
Administrative Hearings Board of Nursing.....	185
Rent.....	162
Out-of-state conferences/seminars.....	138
Systems software maintenance Board of Nursing .....	47
Office of the Attorney General administrative fees.....	44
Per diem payments.....	-30
Printing costs .....	-164
Contractual employee expenses (6.8 full-time equivalents).....	-247
Software acquisition at the Board of Dental Examiners.....	-242
<b>Total</b>	<b>\$1,653</b>

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

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**Personnel**

Personnel expenditures increase by \$1.6 million in fiscal 2014, primarily due to new positions (\$442,000). Employee retirement contributions increase by \$350,000 due to underattainment in investment returns, adjustments in actuarial assumptions, and an increase in the reinvestment of savings achieved in the 2011 pension reform. Furthermore, employee and retiree health insurance expenses increase by \$234,000. The annualization of the fiscal 2013 cost-of-living adjustment (COLA) for State employees increases personnel expenses by \$154,000. The turnover rate for the boards was decreased from 4.19 to 3.55%, resulting in an increase of \$101,000. Expenditures for workers' compensation (\$81,000), accrued leave payout (\$39,000), and regular salaries (\$22,000) also increase. Other fringe benefit adjustments increase by \$17,000. These increases are offset by decreases in Social Security contributions (\$4,000) and additional assistance (\$54,000).

Changes in contractual and regular positions are summarized in **Exhibit 4**. With the exception of the 0.5 new positions at the Board of Environmental Health Specialists, all new positions are contractual conversions. Within the total of 8.5 additional regular positions in the 2014 allowance, the Board of Nursing receives 4.0 new office service clerk positions. These positions will assist in answering the main telephone line for the nursing and nursing assistant divisions of the board. The Board of Physical Therapy Examiners, the Board of Dental Examiners, and the Board of Professional Counselors and Therapists each receive an additional 1.0 position for administrative support. The Board of Morticians also receives 1.0 position to assist with the investigation of complaints. Finally, the Board of Environmental Health Specialists receives 0.5 positions. In accordance with the board's sunset evaluation, Chapter 667 of 2012 transferred the board from the Maryland Department of the Environment (MDE) to DHMH. Accordingly, the position associated with the board was transferred from MDE to DHMH. The decrease in contractual positions at six boards is offset by an increase in contractual FTEs at the Board of Physicians (2.2 FTEs). Additional positions are needed to provide administrative support (1.2 FTEs) and to assist with the licensure of athletic trainers (1.0 FTEs).

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**Exhibit 4**  
**Change in Contractual and Regular Positions**  
**Fiscal 2014**

	<u>Change in Contractual Positions</u>	<u>Change in Regular Positions</u>
Professional Counselors and Therapists	-0.25	1
Dental Examiners	-1.25	1
Environmental Health Specialists	-	0.5
Morticians	-1.25	1
Occupational Therapy Practice	-0.25	-
Physical Therapy Examiners	-1	1
Nursing	-5	4
Physicians	2.2	-
<b>Total</b>	<b>-6.8</b>	<b>8.5</b>

Source: Department of Health and Mental Hygiene

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## **Board of Physicians**

Other contractual services at the Board of Physicians increase by \$153,000. Funding to install a new case tracking and resolution document management system increases by \$296,750. Additional funds are also needed to investigate cases involving self-referral (\$15,000). These increases are offset by a decrease in funding for numerous contracts, including online subscription costs, and fee mediation services decrease by \$158,680. Funding for systems software acquisition and data processing equipment increases by \$140,000. Finally, contractual costs associated with the Physician Rehabilitation Program and the peer review services also increase (\$83,000).

## **Operating Expenses**

The fiscal 2014 allowance includes additional funding for administrative hearings at the Board of Nursing (\$185,000). Other increases in costs include additional funding for rent (\$162,000) and out-of-state conferences and seminars (\$138,000). Software maintenance at the Board of Nursing (\$47,000) and administrative charges including an Office of the Attorney General fee also increase the budget (\$44,000). These increases are offset by a decrease in costs for per diem payments (\$30,000) and printing (\$164,000). The removal of funds for 6.8 full-time equivalents also decreases the budget by \$247,000. Finally, the removal of one-time funds for software acquisition at the Board of Dental Examiners decreases the budget by \$242,000.

## ***Issues***

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### **1. Regulation of Compounding Pharmacies**

In September 2012, tainted steroid shots caused an outbreak of fungal meningitis (a potentially fatal inflammation of the tissue surrounding the spinal cord) among those who had received the injectable medications. The shots were all produced by the New England Compounding Center in Massachusetts. As of November 9, 2012, the outbreak had affected 438 individuals and caused 32 deaths nationwide, including 23 cases and 1 death in Maryland. According to DHMH, as many as 1,100 patients in Maryland may have been injected with contaminated steroids. Seven medical facilities in the State have been identified as having received contaminated medications from the center. Since becoming aware of the contaminated drugs, DHMH and the affected facilities have notified approximately 1,700 patients of their potential exposure.

This event led to a massive recall and raised questions regarding the safety and regulatory oversight of compounding pharmacies such as the one in which the contamination originated.

#### **Current Regulation of Compounding Pharmacies**

The traditional role of compounding pharmacies was to customize physician-prescribed drugs for specific patients with needs that could not be met by commercially available drugs. In recent years, however, the role of compounding pharmacies has expanded, and such facilities have been relied upon to address local drug shortages. According to the International Academy of Compounding Pharmacists, the compounding industry makes up an estimated 1 to 3% of the prescription market in the United States.

Although the U.S. Food and Drug Administration (FDA) regulates drug manufacturers, the extent of FDA's authority over compounding pharmacies has been the subject of dispute. Rather, compounding pharmacies are regulated by the boards of pharmacy in the states in which they are located. However, each state has different standards and requirements.

The Maryland State Board of Pharmacy has adopted regulations that pertain specifically to sterile pharmaceutical compounding. These regulations establish standards and requirements regarding personnel, equipment, procedures, labeling, recordkeeping, training, and quality assurance. The board has also developed separate inspection forms for sterile compounding pharmacies that reflect these regulations. Compounding pharmacies – like all licensed, in-state pharmacies – are required to be inspected annually by the board. The board generally meets its annual inspection obligations.

The board does not currently inspect facilities outside of the State, although it is authorized to investigate complaints of out-of-state facilities. In addition, recent legislation (effective October 1, 2012) required nonresident pharmacies licensed in Maryland to employ at least one Maryland-licensed pharmacist who is designated as the pharmacist responsible for providing pharmaceutical services to patients in Maryland. In addition, the legislation expanded the board's authority over nonresident pharmacies by (1) repealing the requirement that the board defer disciplinary action until after certain actions had been taken by the resident state; and (2) broadening the scope of disciplinary actions that may be taken against nonresident pharmacies.

### **Response from the Board of Pharmacy**

Senate Bill 672/House Bill 1096 of 2013 addresses concerns regarding sterile compounding. More specifically, the proposed legislation would require that a sterile compounding facility hold a permit issued by the Board of Pharmacy before the facility may perform sterile compounding in the State. Sterile compounding facilities that are located outside of the State must hold a board-issued permit under certain circumstances. Among other things, the bill would establish three permit categories: low risk, medium risk, and high risk (definitions established in the United States Pharmacopeia, General Chapter 797). Under the legislation, the board would be required to inspect high and medium risk compounding facilities annually, while low risk facilities may be inspected at intervals required by the board.

## **2. Board of Physicians Consultant's Report**

In 2011, the Department of Legislative Services (DLS) performed a full sunset evaluation of the Maryland Board of Physicians and the related allied health advisory committees. In its evaluation, DLS identified significant challenges facing the board, including a growing backlog of complaints and an ongoing lengthening of the timeline for complaint resolution. DLS offered 46 recommendations relating to licensing, complaint resolution, board resources, and other issues. DLS recommended, moreover, that the termination dates for the board and the related allied health advisory committees be extended for only one year due to the board's failure to implement key recommendations and requirements from previous sunset evaluations and sunset legislation, comply with several statutory requirements, and adopt regulations even when required by law. Although legislation was introduced during the 2012 session to implement the statutory changes recommended in the sunset evaluation and to extend the board and allied health advisory committees, it did not pass.

## **University of Maryland Review**

Given the depth of concerns raised by the DLS sunset review, the Secretary of DHMH directed the board to conduct an independent review and provide guidance regarding (1) the board's complaint resolution process; (2) how to respond to the sunset evaluation recommendations; and (3) how to meet board statutory responsibilities. That review was undertaken by the University of Maryland, Baltimore (UMB). In July 2012, UMB issued a report containing 18 recommendations derived from the sunset evaluation and other sources of information. Most of the recommendations relate to the board's complaint resolution procedures, and the most significant of these calls for the establishment of two separate panels to hear disciplinary cases. Those panels would act separately and have the authority to make a final determination in a case. If the first panel handled the case during the investigative stage, the second would handle it after charges were issued and vice versa. DLS generally concurs with the UMB findings and takes no issue with the UMB recommendations.

## **Recommendations for the 2013 Session**

Since the 2011 sunset review, the board has made significant progress in implementing several of the nonstatutory sunset recommendations proposed by DLS and in improving board functions. It has also adopted sanctioning guidelines in accordance with Chapters 533 and 534 of 2010. Nonetheless, legislative action is required in 2013 at the very least to prevent the termination of the board and most of its related allied health advisory committees after July 1, 2013. The legislation could also include the implementation of a number of recommendations made by both UMB and DLS to better the work of the board, as well as ensuring that the board implements statutory requirements. **Exhibit 5** outlines the 2011 sunset evaluation recommendations and the UMB recommendations that require legislative action. Some of the DLS recommendations from 2011 have been modified based on actions taken by Maryland Board of Physicians or other considerations. Nevertheless, DLS recommends that the General Assembly:

- extend the termination dates for the board and the related allied health advisory committees to July 1, 2018;
- require DLS to conduct a direct full evaluation of the board and related allied health advisory committees by October 30, 2016;
- require the board to submit an annual report to the Senate Education, Health, and Environmental Affairs and the House Health and Government Operations committees and DLS in 2013 through 2018 that provides an update on the progress of the board in implementing the 2011 sunset evaluation recommendations and other specified matters; and

**Exhibit 5**  
**Recommendations from Reviews of the State Board of  
Physicians That Require Legislative Action**

- UMB-1            Establish two separate panels to hear disciplinary cases, each acting separately.
- UMB-4 &  
DLS-5            *Require a representative of the allied health professions advisory committee to participate as an ex-officio member in board disciplinary processes when a member of their profession is the subject of a disciplinary proceeding.*
- UMB-9            Authorize the board to use only one peer reviewer in standard of care cases, other than for exceptional cases.
- UMB-11           Adopt a “statement of policy” guiding the actions of the State Board of Physicians (MBP).
- UMB-12           Increase the board size from 21 to 22 members, make a change in board composition, and divide disciplinary matters between the two panels.
- UMB-14           Consolidate and more clearly delineate the duties and powers of the board.
- DLS-4            Repeal the requirement that the board assess physician assistants a fee to fund the rehabilitation program.
- DLS-14           Require MBP to disclose notice of initial denial of a physician license application on its website and the filing of charges on the physician licensee profiles with a disclaimer.
- DLS-15           Require MBP to disclose the filing of charges against an allied health licensee and notice of initial denial of an allied health license application to the public, with a disclaimer.
- DLS-16           Codify the requirement that MBP give the complainant in a case the opportunity to appear before the board during a case resolution conference.
- DLS-19           Authorize MBP to seek and require MBP to have a warrant for entry into private premises for the purpose of investigating formal complaints that allege a person is practicing, attempting to practice, or offering to practice medicine without a license.
- DLS-25           Require MBP to provide online profiles of allied health licensees and require that allied health licensee profiles, to the extent possible, contain the same information that is provided on physician profiles.

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- DLS-31*      *Require that the advisory committee submit an annual report to the board and that the board provide to the advisory committee chair on a biannual basis a report on disciplinary matters involving allied health professionals.*
- DLS-34*      *Prohibit the appointment of an individual to an advisory committee or the board if the individual is providing or has provided services to the board for remuneration unless a waiver is granted by the Governor.*
- DLS-36*      *Require MBP to adopt regulations by December 31, 2012, that govern (1) exceptions to licensure for the purpose of consultation; and (2) exemptions from licensure fees. Adopt budget bill language in the 2014 legislative session to withhold funds from MBP until the regulations are adopted if MBP fails to adopt the regulations as required.*
- DLS-37*      *Require the board to amend its regulations to conform to current practice by December 31, 2013. Adopt budget bill language in the 2014 legislative session to withhold funds from MBP until the regulations are adopted if MBP fails to amend the regulations as required.*
- DLS-38*      *Allow for current MBP practice regarding the requirement of postgraduate medical training for licensure and in cases of the failure to pass the required examination to be consistent with the Maryland Medical Practice Act.*
- DLS-40*      *Require the board to (1) work with the Maryland Insurance Administration, the Office of the Attorney General, the Maryland Health Care Commission, and the Department of Health and Mental Hygiene’s Office of the Inspector General to determine the appropriate entity for investigating and enforcing the Maryland Self-referral Law; and (2) report the findings to the Department of Legislative Services (DLS) in a subsequent follow-up report.*
- DLS-41*      *Authorize MBP, rather than require the circuit courts, to impose civil fines against alternative health systems that fail to report as required so that the civil fine provisions related to reporting by hospitals and related institutions and alternative health systems are the same. Clarify how the court reporting requirement is to be enforced and place the requirement in a separate statutory section.*
- DLS-42*      *Clarify that all entities required to report to the board under §§ 14-413 and 14-414 of the Health Occupations Article are to report every six months even if the entity has not taken disciplinary action against or denied privileges to a licensee.*

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*DLS-46 Extend the termination date for MBP and related allied health advisory committees until July 1, 2018. Require DLS to conduct a direct full evaluation of the board and related allied health advisory committees by October 30, 2016. Require MBP to submit an annual report to the Senate Education, Health, and Environmental Affairs and the House Health and Government Operations committees, as well as to DLS, by December 1 of each year between 2013 and 2018 that provides an update on (1) any changes to the discipline process that have been implemented and the effect of those changes on the complaint backlog and complaint resolution times; (2) the progress of the board in procuring and implementing a new information technology system to improve data management; (3) a long-term financial plan and financial data for the preceding fiscal year; and (4) the progress in the board in implementing the 2011 sunset evaluation recommendations and any statutory changes affecting the board.*

DLS: Department of Legislative Services

MBP: Maryland Board of Physicians

Notes: The references in column one refer to the original report and recommendation number; DLS refers to the *Sunset Review: Evaluation of the State Board of Physicians and the Related Allied Health Advisory Committees, Department of Legislative Services, November 2011*; UMB refers to the *Report to the Maryland Board of Physicians Submitted by the University of Maryland, Baltimore, July 2012*. Recommendations in italics have been modified by DLS since the sunset review was issued.

Source: University of Maryland, Baltimore; Department of Legislative Services

- 
- implement any statutory changes from Exhibit 5 with which the General Assembly concurs.

Senate Bill 672/House Bill 1096 of 2013 implements the recommendations identified in Exhibit 5.

### **3. Child Support Enforcement Administration Audit – Electronic Exchange of Data**

In September 2011, a fiscal compliance audit of the Department of Human Resources' (DHR) Child Support Enforcement Administration (CSEA) was released containing 11 findings, including 5 findings repeated from the previous report. The audit of CSEA contained several findings of concern to the General Assembly, including the failure to establish electronic data exchanges with State agencies for the purpose of professional license suspensions. As a result of the General Assembly's concerns over CSEA's ongoing audit issues and the number of repeat findings, language

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was added to the fiscal 2013 budget bill (Chapter 148 of 2012) withholding \$100,000 of the general fund appropriation for the administrative expenses of the State office of CSEA until DHR completed all actions planned to resolve audit findings.

In a letter dated January 3, 2013, the budget committees reiterated their concern that actions necessary to resolve some findings, including the full implementation of an electronic data exchange for the purpose of professional license suspensions, were not yet complete. As of September 1, 2012, the Office of Legislative Audits (OLA) determined that CSEA had established electronic data exchanges with 7 of the 15 licensing agencies initially identified in the fiscal compliance audit. With the exception of two boards, one agency where no established electronic data exchange had been either implemented or agreed upon for the purposes of professional license suspensions was the Health Professional Boards and Commission. It was noted by DHR that memorandums of understanding (MOU) for the exchange of suspension data for licensees were under development with the Board of Physicians and the Board of Social Work Examiners. DHMH has advised that the remaining boards have not made progress toward implementing an electronic exchange of professional licensure data with CSEA.

In the interim, the Joint Audit Committee focused on the prevalence of repeat audit findings within various State agencies. The committee was concerned that many agencies were having numerous findings repeated in successive audits, and one such agency included CSEA. This year, the Joint Audit Committee has requested that budget bill language be added for each unit of State government that has four or more repeat audit findings in its most recent fiscal compliance audit. Each such agency is to have a portion of its administrative budget withheld pending the adoption of corrective action by the agency, and a determination by OLA that each finding was corrected. The failure to establish electronic data exchanges with State agencies is a repeat finding with CSEA which DHR will be held responsible for resolving this upcoming fiscal year. Since it will require action by both DHR and the Health Professional Boards and Commission to resolve this finding, it is appropriate that both agencies be held responsible until the finding is resolved.

**DLS recommends withholding \$800,000 (\$750,000 from M00B01.04 and \$50,000 from M00B01.05) from the special fund appropriation of the Health Professional Boards and Commission until the electronic exchange of data on licenses is fully implemented such that it addresses the finding within the DHR fiscal compliance audit.**

## ***Recommended Actions***

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1. Add the following language to the special fund appropriation:

, provided that \$750,000 of this appropriation made for the purpose of administrative expenditures may not be expended unless:

- (1) the boards, with the exception of the Board of Social Work Examiners and the Department of Human Resources (DHR), have taken corrective action with respect to the finding in the Child Support Enforcement Administration audit concerning the electronic exchange of data for the purpose of license suspensions on or before January 1, 2014; and
- (2) a report is submitted to the budget committees by DHR indicating that the electronic exchange of data has been established with each board. The budget committees shall have 45 days to review and comment from the date of the submission of the report.

**Explanation:** This action will withhold \$50,000 from each special funded board until DHR reports that there is an operational electronic exchange of data between the boards and DHR for the purpose of license suspensions for various health occupations in cases where licensees are delinquent on child support payments. It is the intent of the General Assembly that the Board of Nursing Home Administrators and the Board of Child Care Program Professionals also establish an electronic exchange of data with DHR by January 1, 2014. Funding is not withheld from the Board of Social Work Examiners because DHR noted that a memorandum of understanding was being developed for the exchange of electronic data with the board.

<b>Information Request</b>	<b>Author</b>	<b>Due Date</b>
Report on the resolution of the Child Support Enforcement Administration audit finding	DHR	January 1, 2014

2. Add the following language to the special fund appropriation:

, provided that \$50,000 of this appropriation made for the purpose of administrative expenditures may not be expended unless:

- (1) the board and the Department of Human Resources (DHR) have taken corrective action with respect to the finding in the Child Support Enforcement Administration audit concerning the electronic exchange of data for the purpose of license suspension on or before January 1, 2014; and

- (2) a report is submitted to the budget committees by DHR indicating that the electronic exchange of data has been established by the board. The budget committees shall have 45 days to review and comment from the date of the submission of the report.

**Explanation:** This action will withhold special funds from the Board of Nursing until DHR reports that there is an operational exchange of data between the board and DHR for the purpose of license suspension for health occupations under the board’s purview in cases where licensees are delinquent on child support payments.

<b>Information Request</b>	<b>Author</b>	<b>Due Date</b>
Report on the resolution of the Child Support Enforcement Administration audit finding	DHR	January 1, 2014

3. Add the following language to the special fund appropriation:

, provided that the new integrated medical licensure and investigation information technology (IT) system shall be considered a major IT development project as defined by State Finance and Procurement Article Section 3A-301 and subject to all statutory provisions that relate to such projects. Further provided that the Maryland Board of Physicians shall establish a separate subprogram to track spending associated with this project.

**Explanation:** This action conforms to statutory provisions regarding major IT development project oversight.

- |                                                                                                                                                                | <b><u>Amount<br/>Reduction</u></b> |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------|
| 4. Reduce special funds in the board of Physicians to reflect reduced cost estimates for their integrated medical licensure and investigation software system. | \$ 91,000 SF                       |
| 5. Add the following language to the special fund deficiency appropriation:                                                                                    |                                    |

Provided that the new integrated medical licensure and investigation information technology (IT) system shall be considered a major IT development project as defined by State Finance and Procurement Article Section 3A-301 and subject to all statutory provisions that relate to such projects. Further provided that the Maryland Board of Physicians shall establish a separate subprogram to track spending associated with this project.

**Explanation:** This action conforms to statutory provisions regarding major IT development project oversight.

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	<b><u>Amount Reduction</u></b>	
6. Reduce the deficiency appropriation for the Board of Physicians to reflect reduced cost estimates for their integrated medical licensure and investigation software system.	468,000	SF
<b>Total Reductions to Fiscal 2013 Deficiency</b>	<b>\$ 468,000</b>	
<b>Total Special Fund Reductions to Allowance</b>	<b>\$ 91,000</b>	

## ***Updates***

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### **1. Preliminary Sunset Reports for Three Health Boards**

Three of the health boards underwent a preliminary sunset evaluation: (1) Acupuncture, (2) Dietetic Practice, and (3) Occupational Therapy Practice. DLS recommended waiving all three boards from full evaluation and enacting legislation to extend the termination date for the boards by 10 years to July 1, 2025.

#### **State Acupuncture Board**

DLS found that the board is sufficiently meeting its mandated duties, including efficiently issuing licenses and taking disciplinary actions against licensees where warranted. The board has a good relationship with the Maryland Acupuncture Society, which described the board as responsive, communicative, and helpful. The board has been responsive to legislative changes, implementing them and updating regulations in a timely manner. In addition, DLS recommended that the board submit a follow-up report by October 1, 2013, to address concerns raised in the evaluation in regard to fiscal pressures facing the board that includes:

- a discussion of options suggested by DLS to keep revenues and expenditures in balance;
- any fee increases;
- changes to the executive director position; and
- options for sharing additional resources or pooling funding with other boards and how such changes would modify the board’s fund balance.

#### **Board of Dietetic Practice**

The General Assembly established the board to protect the public by identifying qualified sources of nutritional care through licensure. The need to protect the public has only increased during the information age, where nutritional information is available to anyone with access to a computer. The board has fulfilled its duty through efficient and timely licensing and complaint resolution processes. Through its continued regulation of dietitian-nutritionists, DLS recommended that the board consider addressing the recurring issue of unlicensed individuals in two ways. First, the board work with the Maryland Academy of Nutrition and Dietetics and the Maryland Nutritionists Association to more clearly define the difference between “practicing dietetics” and “providing services and information related to nonmedical nutrition.” Second, the board should consider what, if any, additional authority it may need to more effectively address complaints alleging the unlicensed practice of dietetics. DLS recommended that the board submit a report by October 1, 2013, that includes any recommendations for legislative changes to clarify the practice of dietetics and any

additional authority the board needs to address complaints alleging the unlicensed practice of dietetics.

## **Board of Occupational Therapy Practice**

The board plays an essential role in both protecting the health and safety of consumers in the occupational therapy arena and serving occupational therapy licensees. Based on the preliminary evaluation, DLS found that the board and its staff are functioning well, maintaining appropriate standards, and promoting a high level of professionalism.

The occupational therapy industry appears to be stable. No legislation relating to the field has been enacted since the last sunset evaluation, which implies that the existing statutes are relevant and effective. With the exception of its regulations pertaining to licensure renewal fees, the board has continually promulgated corresponding regulations in a timely and effective manner. While the board has had some recent issues with its budget and fund balances, they have been appropriately addressed, and the board anticipates stabilization in its revenues and fund balance now that licensees are renewed on an annual rather than biennial basis.

## **2. Budget Projections for Health Occupations Boards**

The 2012 *Joint Chairmen's Report* required DHMH, in conjunction with the health occupations boards, to provide an assessment of the revenue projections of each board to ensure that projections are appropriate and adequate to support licensure and disciplinary activities of the boards in future years. More specifically, the department was to ensure that each board is using a uniform method to project revenues and prepare a five-year budget projection that demonstrates how projected revenues will align with expenses, given the frequency of fund balance transfers in recent years.

### **Report Summary**

The methodology each board uses to predict how much revenue it needs is first determined by identifying total annual costs. Then, it bases its licensure fees on the ratio of expected annual expenses divided by the total number of licensees. Total revenues for licensure fees are then weighted to account for other sources of revenues such as late fees, reinstatement fees, and application fees. The anticipated annual revenue generated by boards whose licensees renew on an annual basis can be compared with the respective anticipated expenses for each year. However, some boards require licensees to renew biennially. Under this model, the number of licensees renewing each year within the two-year renewal cycle may vary. Therefore, the fund balance for these boards fluctuates from year to year.

Each board is advised to maintain a fund balance of approximately 20 to 30%. As shown in **Exhibit 6**, the five-year budget projections for fiscal 2013 through 2017 indicate a few boards anticipate fund balances that exceed the 20% target within five years. However, DHMH advises that the projected fund balances for these boards may diminish due to inflation. In comparison, six boards

**Exhibit 6**  
**Health Occupation Boards Projected Fund Balance**  
**Fiscal 2013-2017**

	<u>2013</u>	<u>2014</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>Target Fund Balance</u>
Acupuncture*	10%	12%	14%	12%	10%	<b>30%</b>
Dietetic Practice*	27%	33%	36%	33%	28%	<b>30%</b>
Professional Counselors and Therapists*	46%	28%	25%	7%	8%	<b>25%</b>
Chiropractic Examiners*	54%	29%	41%	13%	29%	<b>25%</b>
Dental Examiners*	21%	16%	19%	8%	7%	<b>20%</b>
Environmental Health Specialists*	251%	52%	140%	46%	128%	<b>30%</b>
Morticians*	39%	38%	28%	24%	10%	<b>25%</b>
Occupational Therapy	23%	15%	18%	18%	17%	<b>25%</b>
Optometry*	29%	29%	27%	22%	16%	<b>30%</b>
Pharmacy*	64%	55%	49%	37%	28%	<b>25%</b>
Physical Therapy*	45%	37%	22%	34%	40%	<b>25%</b>
Podiatric Medical Examiners	49%	34%	25%	15%	3%	<b>30%</b>
Psychologists*	16%	10%	14%	20%	26%	<b>25%</b>
Social Work Examiners*	13%	1%	5%	6%	6%	<b>25%</b>
Audiologists, Hearing Aid Dispensers, and Speech-Language Pathologists*	15%	14%	11%	7%	1%	<b>30%</b>
Kidney Disease	20%	16%	18%	11%	8%	<b>30%</b>
Nursing*	37%	41%	36%	31%	26%	<b>20%</b>
Physicians	30%	26%	27%	25%	27%	<b>20%</b>

\*Reflects biennial licensure renewal.

Source: Department of Health and Mental Hygiene

have indicated that they anticipate a fund balance of less than 10% by fiscal 2017. Consequently, several boards indicated they will have to increase fees by fiscal 2017, including the Board of Podiatric Medical Examiners, the Board of Social Work Examiners, and the Commission on Kidney Disease.

## *Current and Prior Year Budgets*

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### **Current and Prior Year Budgets DHMH – Health Professional Boards and Commission (\$ in Thousands)**

	<b><u>General Fund</u></b>	<b><u>Special Fund</u></b>	<b><u>Federal Fund</u></b>	<b><u>Reimb. Fund</u></b>	<b><u>Total</u></b>
<b>Fiscal 2012</b>					
Legislative Appropriation	\$322	\$27,844	\$0	\$440	\$28,605
Deficiency Appropriation	0	0	0	0	0
Budget Amendments	-2	175	0	0	173
Reversions and Cancellations	0	-1,774	0	-23	-1,797
<b>Actual Expenditures</b>	<b>\$320</b>	<b>\$26,245</b>	<b>\$0</b>	<b>\$417</b>	<b>\$26,981</b>
<b>Fiscal 2013</b>					
Legislative Appropriation	\$386	\$29,314	\$0	\$470	\$30,171
Budget Amendments	0	164	0	0	164
<b>Working Appropriation</b>	<b>\$386</b>	<b>\$29,478</b>	<b>\$0</b>	<b>\$470</b>	<b>\$30,335</b>

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

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## **Fiscal 2012**

The budget for the Health Professional Boards and Commission (boards) closed at \$27.0 million in fiscal 2012, \$1.6 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 Administrators, which are both funded with general funds.

Budget amendments over the course of fiscal 2012 increased the budget of the boards by approximately \$173,000. The fiscal 2012 budget for the Department of Budget and Management (DBM) included centrally budgeted funds for the \$750 one-time bonus for State employees. This resulted in the transfer of funds from DBM to the health boards (\$2,261 in general funds and \$175,040 in special funds). General funds also decreased by \$4,477 in the Board of Examiners of Nursing Home Administrators to realign funds within DHMH from programs with surpluses to those with deficits.

Finally, at the end of 2012, \$1.8 million in special funds and \$23,000 in reimbursable funds were cancelled due to reduced expenditures by the boards as a result of increased vacancies. It should also be noted that \$426,520 in special funds were transferred to the general fund by the Budget Reconciliation and Financing Act of 2012. This includes \$320,392 from the Board of Physicians; \$96,350 from the Board of Audiologists, Hearing Aid Dispensers, and Speech-Language Pathologists; and \$9,788 from the Board of Morticians and Funeral Directors.

## **Fiscal 2013**

The fiscal 2013 working appropriation is \$30.3 million, an increase of \$165,000 over the original legislative appropriation. The fiscal 2013 budget for DBM included centrally budgeted funds for the 2013 COLA for State employees. This resulted in the transfer of funds from DBM to the boards (\$147,445 special funds). Finally, one amendment increased the special fund appropriation for the boards by \$16,739. This reflects a \$35,415 increase in funding for the Board of Environmental Health Specialists. The increase in funds for the Board of Environmental Health Specialists reflects unappropriated special fund revenues from licensure fees. A portion of these funds (\$18,676) is paid to the Board of Social Work Examiners for shared salary costs for a program coordinator and other administrative expenses. This increase is offset by a \$18,676 decrease in funds for the Board of Social Work Examiners to account for funds from the Board of Environmental Health Specialists.

**Object/Fund Difference Report  
DHMH – Health Professional Boards and Commission**

<u>Object/Fund</u>	<u>FY 12 Actual</u>	<u>FY 13 Working Appropriation</u>	<u>FY 14 Allowance</u>	<u>FY 13 - FY 14 Amount Change</u>	<u>Percent Change</u>
<b>Positions</b>					
01 Regular	250.70	257.20	265.70	8.50	3.3%
02 Contractual	11.72	19.40	12.60	-6.80	-35.1%
<b>Total Positions</b>	<b>262.42</b>	<b>276.60</b>	<b>278.30</b>	<b>1.70</b>	<b>0.6%</b>
<b>Objects</b>					
01 Salaries and Wages	\$ 17,937,523	\$ 18,995,760	\$ 20,411,657	\$ 1,415,897	7.5%
02 Technical and Spec. Fees	1,462,129	1,905,053	1,628,066	-276,987	-14.5%
03 Communication	486,565	593,110	634,485	41,375	7.0%
04 Travel	323,251	344,765	486,269	141,504	41.0%
07 Motor Vehicles	48,444	15,375	17,538	2,163	14.1%
08 Contractual Services	5,045,859	6,514,158	6,658,894	144,736	2.2%
09 Supplies and Materials	280,492	316,191	310,073	-6,118	-1.9%
10 Equipment – Replacement	48,676	53,735	88,240	34,505	64.2%
11 Equipment – Additional	131,509	122,086	148,715	26,629	21.8%
12 Grants, Subsidies, and Contributions	0	24,000	24,000	0	0%
13 Fixed Charges	1,216,349	1,450,695	1,611,707	161,012	11.1%
<b>Total Objects</b>	<b>\$ 26,980,797</b>	<b>\$ 30,334,928</b>	<b>\$ 32,019,644</b>	<b>\$ 1,684,716</b>	<b>5.6%</b>
<b>Funds</b>					
01 General Fund	\$ 319,607	\$ 386,335	\$ 383,623	-\$ 2,712	-0.7%
03 Special Fund	26,244,629	29,478,484	31,152,971	1,674,487	5.7%
09 Reimbursable Fund	416,561	470,109	483,050	12,941	2.8%
<b>Total Funds</b>	<b>\$ 26,980,797</b>	<b>\$ 30,334,928</b>	<b>\$ 32,019,644</b>	<b>\$ 1,684,716</b>	<b>5.6%</b>

Note: The fiscal 2013 appropriation does not include deficiencies. The fiscal 2014 allowance does not include contingent reductions.

**Fiscal Summary**  
**DHMH – Health Professional Boards and Commission**

<u>Program/Unit</u>	<u>FY 12 Actual</u>	<u>FY 13 Wrk Approp</u>	<u>FY 14 Allowance</u>	<u>Change</u>	<u>FY 13 - FY 14 % Change</u>
04 Health Professional Boards and Commission	\$ 11,774,438	\$ 13,692,860	\$ 13,905,473	\$ 212,613	1.6%
05 Board of Nursing	6,808,120	7,873,474	8,484,524	611,050	7.8%
06 Maryland Board of Physicians	8,398,239	8,768,594	9,629,647	861,053	9.8%
<b>Total Expenditures</b>	<b>\$ 26,980,797</b>	<b>\$ 30,334,928</b>	<b>\$ 32,019,644</b>	<b>\$ 1,684,716</b>	<b>5.6%</b>
General Fund	\$ 319,607	\$ 386,335	\$ 383,623	-\$ 2,712	-0.7%
Special Fund	26,244,629	29,478,484	31,152,971	1,674,487	5.7%
<b>Total Appropriations</b>	<b>\$ 26,564,236</b>	<b>\$ 29,864,819</b>	<b>\$ 31,536,594</b>	<b>\$ 1,671,775</b>	<b>5.6%</b>
Reimbursable Fund	\$ 416,561	\$ 470,109	\$ 483,050	\$ 12,941	2.8%
<b>Total Funds</b>	<b>\$ 26,980,797</b>	<b>\$ 30,334,928</b>	<b>\$ 32,019,644</b>	<b>\$ 1,684,716</b>	<b>5.6%</b>

Note: The fiscal 2013 appropriation does not include deficiencies. The fiscal 2014 allowance does not include contingent reductions.