

Department of Legislative Services
 Maryland General Assembly
 2001 Session

FISCAL NOTE

House Bill 591 (Delegate Weir)
 Environmental Matters

Board of Physician Quality Assurance - Complaint and Hearing Procedures

This bill alters the Board of Physician Quality Assurance’s complaint investigation and hearing procedures in disciplinary cases and other actions brought against a physician.

The bill’s provisions apply retroactively to any proceeding before the board in a complaint filed on or after November 1, 1995.

Fiscal Summary

State Effect: Board of Physician Quality Assurance (BPQA) special fund expenditures could increase by an estimated \$354,300 in FY 2002. Future year estimates reflect annualization, inflation, and a declining need for personnel. No effect on revenues.

(in dollars)	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Revenues	\$0	\$0	\$0	\$0	\$0
SF Expenditure	354,300	449,400	460,800	472,700	137,600
Net Effect	(\$354,300)	(\$449,400)	(\$460,800)	(\$472,700)	(\$137,600)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: None.

Small Business Effect: Potential minimal. Small business physicians who have had their licenses suspended or revoked could have these orders vacated and a new hearing conducted. In addition, small business physicians that face disciplinary hearings by the BPQA would receive more discovery opportunity, more favorable evidentiary standards, and a more favorable burden of proof in some circumstances.

Analysis

Bill Summary: The bill provides that in a standard of care case, the BPQA cannot refer the allegation to a county medical society or the Medical and Chirurgical Faculty (faculty) for further investigation unless the patient or patient's custodian, guardian, or personal representative provides an affidavit stating that the patient alleges the physician failed to exercise the applicable standard of care in treating the patient. In all other types of cases, after receipt of written documentation of alleged grounds for disciplinary or other action, the BPQA must refer the allegation to the appropriate investigatory body.

A subpoena issued by the BPQA when conducting an investigation must seek information relevant to written allegations that are the basis for a disciplinary or other action. A signature cannot be issued for patient medical records sought on a random basis. If entry onto the subpoenaed individual's premises is required, the BPQA must obtain approval by a court of competent jurisdiction before entering a licensed physician's place of business or public premises.

The bill also provides that hearsay is not admissible in medical testimony in a hearing before the BPQA. The BPQA must allow for the taking of depositions and discovery at least 30 days prior to the hearing of charges. BPQA investigation files must be fully subject to inspection and discovery by the defendant in a board proceeding. The BPQA must create and maintain an expert witness roster of physicians and other health care providers, which must be made available to a defendant in a board proceeding. In a standard of care case involving surgery, the fact that the head of the surgical department for the hospital or ambulatory surgical center preapproved the procedure creates a rebuttable presumption that the applicable standard of care was met in scheduling the surgery to be performed.

Any health care provider who was the subject of a proceeding before the BPQA from November 1, 1995 to October 1, 2001 may request that the BPQA vacate any order previously issued during that time and rehear the charges alleged in that earlier proceeding in accordance with the standards and requirements imposed by the bill. If, without a showing of injury to a patient, a provider's privilege to practice medicine has been revoked or suspended for a breach of the standard of care, the BPQA must obtain a court order reinstating the provider and expunging the disciplinary record.

Current Law: The BPQA licenses physicians and has the statutory authority to conduct investigations and hold hearings in connection with a licensee's failure to comply with BPQA standards. The BPQA may issue subpoenas, administer oaths, and enter onto a licensee's premises.

A patient or family member may file a complaint with the BPQA seeking disciplinary action against a physician and the BPQA must offer the patient an opportunity to be interviewed. The patient or family member is not required to provide an affidavit alleging that the physician failed to exercise the applicable standard of care in treating the patient.

Under the State Administrative Procedure Act, hearsay testimony is generally admissible.

State Fiscal Effect: BPQA special fund expenditures could increase by an estimated \$354,349 in fiscal 2002, which accounts for the bill's October 1, 2001 effective date. This estimate reflects the cost of: (1) two permanent positions to handle the bill's requirements for complaint and hearing procedures beginning October 1, 2001; (2) four contractual positions for four years to handle additional hearings requested by licensees whose licenses to practice medicine were suspended or revoked between November 1, 1995 and October 1, 2001; and (3) additional deposition expenses and expert witness fees associated with rehearing cases against previously disciplined licensees.

The permanent positions include one assistant attorney general and one compliance analyst to adopt regulations for taking depositions and discovery, maintain and update an expert witness roster, obtain affidavits from patients in standard of care cases, and obtain certain subpoenas. The contractual positions include one assistant attorney general, one staff attorney, and two compliance analysts to assist in vacating orders and rehearing cases. This estimate also assumes that most of the 358 licensees whose licenses were suspended or revoked since 1995 will request new hearings. It is assumed that these cases will be requested and heard (approximately 90 cases per year) in the next four years.

Salary and Fringe Benefits	\$204,378
Deposition Fees	55,451
Expert Witness Fees	66,991
Other Operating Expenses	<u>27,529</u>
Total FY 2002 Expenditures	\$354,349

Future year expenditures reflect: (1) full salaries for permanent positions with a 6.5% annual increase in fiscal 2003, 4.5% annual increases each year thereafter, and 3% employee turnover; (2) full salaries for contractual positions with 2.3% annual increases and 3.8% employee turnover; and (3) 1% annual increases in ongoing operating expenses. Revenues would not be affected.

Additional Information

Prior Introductions: None.

Cross File: SB 280 (Senator Hollinger) – Economic and Environmental Affairs.

Information Source(s): Department of Health and Mental Hygiene (Board of Physician Quality Assurance), Office of Administrative Hearings, Department of Legislative Services

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