

Department of Legislative Services
 Maryland General Assembly
 2003 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 500 (Senator Hollinger)
 Education, Health, and Environmental Affairs Health and Government Operations

Department of Health and Mental Hygiene - State Board of Physicians

This bill extends the sunset date for the Board of Physician Quality Assurance (BPQA) from July 1, 2003 to July 1, 2007. Additionally, the bill renames BPQA as the State Board of Physicians.

The bill takes effect July 1, 2003.

Fiscal Summary

State Effect: General fund revenues could decrease by \$19,500 and board special fund revenues could increase the same amount in FY 2004. Special fund revenues and expenditures for BPQA would be maintained beyond June 30, 2003.

(in dollars)	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
GF Revenue	(\$19,500)	(\$19,700)	(\$19,900)	(\$20,100)	\$0
SF Revenue	19,500	19,700	19,900	20,100	0
Expenditure	\$0	\$0	\$0	\$0	\$0
Net Effect	\$0	\$0	\$0	\$0	\$0

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

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: The bill repeals the requirement under the Maryland Program Evaluation Act that the board undergo a preliminary evaluation prior to the full evaluation to be conducted July 1, 2006. The bill revises the board composition by increasing board membership from 15 to 21 members, changing term limits from three to four years, specifying practice and specialty requirements, and imposing certain residency requirements. The bill authorizes the board to delegate the authority to conduct disciplinary hearings to a subcommittee consisting of three or more board members. The board may only dismiss a case against a restricted licensee on the affirmative vote of its full authorized membership.

The bill requires the board to maintain a public individual profile on each licensee. In addition to current profile requirements, the profile must contain information on: (1) the number of final medical malpractice court judgments and arbitration awards against the licensee within the most recent ten-year period; (2) the number of medical malpractice settlements, if there are three or more, with a settlement amount of \$150,000 or greater within the most recent ten-year period; (3) a description of a conviction or entry of a guilty or *nolo contendere* plea for a crime involving moral turpitude; and (4) medical education and practice information about the licensee. The board must maintain a web site that serves as a single point of entry where all physician profile information is available to the public on the Internet.

The bill repeals the requirement that the board use the Medical and Chirurgical Faculty of the State of Maryland (MedChi) to provide peer review services and allows the board to contract with another nonprofit entity to provide these services.

The bill changes the vote required to initiate a charge against a licensee from an affirmative vote of the full authorized membership of the board to a majority of its quorum. The bill specifies that the evidentiary standard for disciplinary hearings is by a preponderance of the evidence. Notwithstanding this standard, factual findings must be supported by clear and convincing evidence for charges based on: (1) failure to meet appropriate standards for the delivery of respiratory care; or (2) failure to meet appropriate standards for the delivery of quality radiation oncology/therapy technology care, medical radiation technology care, or nuclear medicine technology care.

The bill requires the board to set licensure fees so as to approximate the cost of maintaining the board. It provides that any interest or income derived from the board fund be paid into the fund. If the Governor does not include at least \$750,000 in the budget for the operation of the Health Manpower Shortage Incentive Program (HMSIGP) and the Janet L. Hoffman Loan Assistance Repayment Program (LARP), the Comptroller

must distribute: (1) 14% of the fees to the Office of Student Financial Assistance to be used as follows: (a) one-half to make grants under HMSIGP; and (b) one-half to make grants under LARP; and (2) the remainder of the fees to the Physicians Licensing Fund. If the Governor does include at least \$750,000 in the budget for these programs, the Comptroller must distribute all fees to the Board of Physicians Fund.

On August 1, 2003, the Governor, with the advice of the Secretary of Health and Mental Hygiene and the advice and consent of the Senate, must appoint a new State Board of Physicians. The bill provides for member term limits for those members appointed on August 1, 2003.

The board must also report to the Governor and specified committees by January 1, 2004 on investigative caseloads of board investigators. The board and the Office of the Attorney General must review all aspects of the board's investigative processes and recommend revisions. The board must report by January 1, 2004 to the Senate Education, Health, and Environment Affairs and House Health and Government Operations committees on its findings.

The board, in conducting a case resolution conference, must provide an opportunity to appear before the board to both the licensee who has been charged and the individual who has filed the complaint against the licensee. Peer review activities must use two peer reviewers, and in the event of a lack of agreement between the two, the board must use a third peer reviewer to render a final peer review decision.

The Board of Physicians and the Department of Health and Mental Hygiene must report to the Senate Education, Health, and Environmental Affairs Committee and the House Health and Government Operations Committee by December 1 of 2003, 2004, and 2005 on the implementation of the bill's changes to the licensure and regulation of physicians and other allied health professionals.

Current Law: BPQA is subject to the Maryland Program Evaluation Act (sunset law). Its termination date is July 1, 2003. The board collects special funds from licensees and pays them directly to the Comptroller. The Comptroller must distribute 86% of the licensure fees to the board fund. The remaining 14% are distributed to the State Scholarship Administration (SSA). Half of these fees are transferred to the Loan Assistance Repayment Program, and half are transferred to the Health Manpower Shortage Incentive Grant Program.

The board assesses a \$50 fee against licensees and remits these funds to MedChi to fund peer review and rehabilitation committee services. The \$50 assessment is not subject to

the 14% diversion required of other board licensure fees. MedChi must perform peer review and rehabilitation committee services for the board.

Disciplinary hearings are conducted by the Office of Administrative Hearings. The board must create an individual profile on each licensee, including information on disciplinary actions taken by the board and a description of any final disciplinary action taken by a licensing board in any other state or jurisdiction.

Background: The bill's provisions stem from several recommendations made in the *Sunset Review of the Board of Physician Quality Assurance* (October 2001) conducted by the Department of Legislative Services.

State Revenues: BPQA special fund revenues from interest earned and retained in the BPQA fund could increase by an estimated \$19,508 in fiscal 2004, and general fund revenues would decrease by the same amount. The Comptroller currently earns interest on BPQA special funds, which the bill permits BPQA to retain. This estimate assumes the BPQA fund will earn 3.4% interest on its fund balance of \$573,775. Future year estimates assume 3.4% interest annually and 1% inflation in licensure fees.

State Expenditures:

Repeal of the 14% Diversion: BPQA's fiscal 2004 budget allowance is \$6.2 million. Contingent upon the Governor's including at least \$750,000 in the budget for HMSIGP and LARP, the Comptroller must distribute 100% of licensure fees to the Board of Physicians Fund. The fiscal 2004 allowance for LARP is \$575,995 general funds. There is not a general fund allowance for HMSIGP. Since this does not meet the bill's funding requirements, 14% of licensure fees would continue to be transferred to these programs. *For illustrative purposes only*, if the Governor provides \$750,000 in the fiscal 2005 budget for HMSIGP and LARP, special fund revenues would increase by \$1,014,153 and HMSIGP and LARP special fund revenues would decrease by the same amount by discontinuing the 14% diversion of fees to these programs. One hundred percent of the fiscal 2005 estimated licensure fees of \$7,243,948 would go to the Board of Physicians Fund.

Additional Information

Prior Introductions: A similar bill, HB 846, was introduced in the 2002 session. The bill passed the House with amendments. No further action was taken by the Senate.

Cross File: None.

Information Source(s): Office of Administrative Hearings, Department of Health and Mental Hygiene, Maryland Higher Education Commission, Office of the Attorney General, Department of Legislative Services

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