

Department of Legislative Services
Maryland General Assembly
2003 Session

FISCAL AND POLICY NOTE

Senate Bill 774 (Senator Hollinger)
Education, Health, and Environmental Affairs

Health Occupations - State Board of Physician Quality Assurance

This bill repeals the current regulatory scheme that governs the licensure and regulation of physicians, effective October 1, 2003, and imposes a new regulatory scheme. It also extends the termination date of the Board of Physician Quality Assurance (BPQA) from July 1, 2003 to October 1, 2003.

The bill's provision that extends BPQA's termination date takes effect July 1, 2003, contingent on the failure of SB 500, HB 790, and HB 791 of 2003. The bill's other provisions take effect October 1, 2003.

Fiscal Summary

State Effect: Special fund revenues and expenditures for BPQA would be maintained until September 30, 2003. Dissolving BPQA and requiring the Secretary of Health and Mental Hygiene to regulate physicians would not materially affect State finances.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: The bill provides that on October 1, 2003, all functions, powers, duties, equipment, revenues, assets, liabilities, and records of BPQA must be transferred to the Secretary of Health and Mental Hygiene. The Secretary must set standards for the licensure of physicians and the practice of medicine in the State.

The Secretary may adopt rules and regulations to:

- carry out the bill's provisions;
- regulate the performance of acupuncture;
- after consulting with the State Board of Pharmacy, regulate the dispensing of prescription drugs by a licensed physician;
- deny a license to an applicant or refuse to renew or reinstate an applicant's license for any of the reasons that are grounds for action as determined by the Secretary;
- on receipt of a written and signed complaint, conduct an unannounced inspection of a physician's or acupuncturist's office to determine compliance at that office with the federal Centers for Disease Control's guidelines on universal precautions;
- contract with others for the purchase of administrative and examination services;
- investigate an alleged violation of the bill's provisions;
- issue subpoenas and administer oaths in connection with investigations;
- authorize certain individuals to practice medicine without a license;
- determine the qualifications of an applicant for licensure;
- require an application fee, or waive certain individuals from having to pay an application fee;
- require the passage of an examination as a condition of licensure or waive certain individuals from the requirement;
- issue a license to an eligible applicant;
- require a license fee or waive certain individuals from the requirement to pay a license fee;
- place a licensee on inactive status;
- issue a limited or restricted license;
- establish a physician rehabilitation program;
- establish grounds for reprimand, probation, suspension, or revocation of a license;
- impose a fine on a licensee; and
- reinstate a license.

By October 1, 2003, the Secretary must adopt rules and regulations regarding the licensure and regulation of physicians, radiation oncology/therapy technologists, medical radiation technologists, nuclear medicine technologists, and respiratory care practitioners. The Secretary is also responsible for the regulation of physician assistants.

As of September 30, 2003, all special appointments, contractual employees, and temporary employees in a position authorized by Health Occupations Article 14-204 must continue their employment with the Department of Health and Mental Hygiene (DHMH) to facilitate the regulation of the practice of medicine. The Secretary may designate one of the staff as an executive director. The bill makes other provisions for the composition, classification, and compensation of staff.

The bill establishes a Physicians Licensing Fund as a continuing, nonlapsing fund. Monies in the fund may be expended for any lawful purpose authorized by the bill's provisions. The Secretary may set reasonable fees for the issuance and renewal of licenses. Except for fees assessed to pay the costs of an examination or for the physician rehabilitation program and peer review activities, the Secretary must pay all fees to the Comptroller of the State for inclusion in the special 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 the Health Manpower Shortage Incentive Grant Program; 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 Physicians Licensing Fund. The Legislative Auditor must audit the accounts and transactions of the fund.

The licensure and regulation of physicians is subject to the Maryland Program Evaluation Act and terminates July 1, 2007.

Current Law: BPQA is composed of 15 members, of whom: (1) ten must be practicing licensed physicians selected from a list submitted by MedChi; (2) one must be a practicing licensed physician who is appointed at the Governor's discretion; (3) one is a representative of DHMH; (4) two are consumer members appointed with the advice and consent of the Senate; and (5) one is a consumer member knowledgeable in risk management or quality assurance matters, appointed from a list submitted by the Maryland Hospital Association. The primary functions of BPQA are to examine, license, and discipline physicians (medical or osteopathic) and certain allied health professionals.

BPQA is subject to the Maryland Program Evaluation Act (sunset review). Its termination date is July 1, 2003. BPQA collects special funds from licensees and pays them directly to the Comptroller. The Comptroller must distribute 86% of licensure fees collected by BPQA to the BPQA 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.

Background: In 2001, the Department of Legislative Services (DLS) undertook an evaluation (sunset review) of BPQA in accordance with the Maryland Program Evaluation Act. In its October 2001 report, DLS recommended that the evidentiary standard for physician disciplinary proceedings be changed from the current clear and convincing evidence standard to the preponderance of the evidence standard. Prior to 1988, the standard for discipline for physicians was the preponderance of the evidence standard. The preponderance of the evidence standard is the legal standard for disciplinary decisions by all other health occupations boards in the State. Additionally, most other medical boards use the preponderance of the evidence standard, and this standard has been adopted by the Federation of State Medical Boards.

The bill's enactment is contingent upon the failure of three bills currently before the General Assembly: (1) SB 500, which extends BPQA's termination date to 2007 and makes other changes; (2) HB 791, which extends BPQA's termination date to 2008 and makes other changes; and (3) HB 790, which extends BPQA's termination date to 2005. Several provisions in SB 500 and HB 791 stem from recommendations made by DLS's sunset review of BPQA in 2001. HB 790 extends BPQA's termination date two more years, providing the General Assembly with more time to review BPQA's functions. If no legislation passes this session to extend BPQA's termination date, BPQA will expire June 30, 2003.

State Fiscal Effect: The bill's provisions extend BPQA's termination date from June 30, 2003 to September 30, 2003. Accordingly, special fund revenues and expenditures for BPQA would be maintained until September 30, 2003. Dissolving BPQA and requiring the Secretary of Health and Mental Hygiene to regulate physicians, beginning October 1, 2003, would not materially affect State finances. Dissolving BPQA would result in minimal special fund expenditure reductions for costs directly attributable to the board, such as per diems and travel reimbursement. Special fund expenditures could increase minimally, however, since consultant medical services could be required to provide advice on rules and regulations regarding licensure and discipline of physicians and allied health professionals.

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 Physicians Licensing 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 Physicians Licensing Fund.

Additional Information

Prior Introductions: None.

Cross File: None.

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

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