

Department of Legislative Services
Maryland General Assembly
2004 Session

FISCAL AND POLICY NOTE

House Bill 1321 (Delegate Rudolph)
Health and Government Operations

**Health Occupations Boards - Misdemeanor Offenses - Delegation of Authority,
Fines, and Penalties**

This bill makes the maximum fines and/or prison terms that may be imposed on individuals convicted of misdemeanor offenses more consistent across most health occupations boards. The bill authorizes one board to impose a civil penalty. It also authorizes a hearing on disciplinary actions to be delegated to a board committee and, for most boards, requires individuals found in violation to pay those hearing costs.

The bill requires prosecution for all misdemeanor offenses under the Health Occupations Article to be instituted within three years after the offense was committed.

Fiscal Summary

State Effect: Potential minimal increase in general fund revenues and expenditures due to the bill's penalty provisions. Potential minimal increase in Department of Health and Mental Hygiene (DHMH) special fund revenues in FY 2005 and the out-years due to the bill's civil penalty provision. No effect on DHMH special fund expenditures or Office of Administrative Hearings (OAH) general fund expenditures because the bill is not expected to increase the number of hearings.

Local Effect: Potential minimal increase in revenues and expenditures due to the bill's penalty provisions.

Small Business Effect: Meaningful for violators who are found guilty of a misdemeanor offense and charged a fine or on whom a civil penalty is imposed.

Analysis

Bill Summary: Generally, the bill increases the maximum misdemeanor penalties for specified violations of health occupations board statutes to \$5,000 per violation or three years in prison, or both. Some boards only allow the fine or prison, not both. Offenses under the State Board of Nursing, State Board of Podiatric Medical Examiners, and State Board of Nursing Home Administrators have lower penalties. Conversely, two or more offenses under the State Board of Chiropractic Examiners and State Board of Dental Examiners have greater penalties. Additionally, the bill allows the State Board of Physical Therapy Examiners to impose a civil fine of up to \$50,000 on an individual who practices physical therapy without a license.

For the health occupations boards that are authorized to delegate a hearing on disciplinary actions to a committee of three or more board members, the bill establishes several requirements. The committee must hold an evidentiary hearing and prepare a recommended decision for consideration by a quorum of the board, which may include committee members. The committee must give each party notice of the opportunity to file exceptions and present argument to the board regarding the committee's decision. The bill requires 10 health occupations boards to recoup hearing costs from individuals found in violation.

Appendix 1 includes the changes in maximum criminal penalties, hearing cost reimbursements, and delegated hearing authority for the 15 health occupations boards so affected and makes current law comparisons.

Current Law: A board, commission, or agency head authorized to conduct a contested case hearing must: (1) conduct the hearing; or (2) delegate the authority to conduct the hearing to OAH or, with the prior written approval of the Chief Administrative Law Judge, to a person not employed by OAH.

As the comparison chart in Appendix 1 shows, only two health occupations boards have authority to delegate a disciplinary hearing to a committee; the Board of Occupational Therapy Practice may do so to a committee of two or more board members, and the Board of Physical Therapy Examiners may do so to a committee of three or more board members. Four boards must recoup hearing costs from individuals found in violation after a hearing: the Acupuncture Board, the Board of Morticians, the Board of Podiatric Medical Examiners, and the Board of Social Work Examiners.

The maximum misdemeanor penalties vary considerably; the least stringent set of penalties is \$500 or 90 days in prison for social workers. Several other boards have similar maximum penalties, but both the fine and prison time may be imposed.

Podiatrists and nurses are subject to maximum penalties of \$5,000 per violation; nurses could also be sentenced to one year in prison or both, whereas podiatrists could be sentenced to 90 days in prison instead. However, podiatrists are also subject to a civil penalty of up to \$50,000. A few boards have greater penalties for subsequent violations.

Prosecution for a misdemeanor offense related to practicing as a nursing home administrator or practicing medicine without a license must be instituted within three years after the offense was committed.

Background: DHMH reports that the District Court has been reluctant to pursue misdemeanor cases for most health occupations boards because the current fine structure is too low to merit prosecution.

Except for the time limit on prosecuting misdemeanor offenses, the bill does not affect certain health occupations. Consequently, the maximum misdemeanor penalties for the following occupations remain unchanged from current law:

- massage therapists: \$5,000, one year in prison, or both;
- dietitians and nutritionists: \$1,000, one year in prison, or both;
- electrologists: \$5,000, one year in prison, or both;
- physicians: \$500 for advertising violations, and \$5,000, five years in prison, or both for other violations;
- radiation oncology/therapy technologists and medical radiation technologists: \$1,000, one year in prison, or both;
- respiratory care practitioners: \$1,000, one year in prison, or both; and
- physician assistants: \$5,000, five years in prison, or both.

Some health occupations boards may also impose civil fines; these range from \$100 for failure by a physician to report burn treatment to \$50,000 for physicians, podiatrists, and pharmacists who practice without a license.

In addition, several health occupations boards also have the authority to impose a penalty either instead of or in addition to suspending or revoking a license, reprimanding a licensee, or placing a licensee on probation. The maximum penalty of \$500 applies to nursing assistants under the Board of Nursing and \$1,000 applies to audiologists, hearing aid dispensers, and speech-language pathologists. The following boards have a maximum penalty of \$5,000: Chiropractic Examiners for chiropractors and massage therapists, Dental Examiners, Morticians, Nursing for nurses and electrologists, Examiners in Optometry, Physical Therapy Examiners, and Social Work Examiners.

Two boards have a maximum penalty of \$10,000: Pharmacy and Examiners of Psychologists. Two additional boards, Physicians and Podiatric Medical Examiners may set the maximum penalty in regulation.

State Revenues: General fund revenues could increase minimally as a result of the bill's monetary penalty provisions from cases heard in the District Court. Special fund revenues could increase as a result of the creation of a maximum civil fine of up to \$50,000 per violation under the State Board of Physical Therapy Examiners. The increase depends on the number of violations and the fine amount imposed, which would be paid to the State Board of Physical Therapy Examiners Fund.

State Expenditures: General fund expenditures could increase minimally as a result of the bill's increase in incarceration penalties due to more people being committed to Division of Correction (DOC) facilities and increased payments to counties for reimbursement of inmate costs. The number of people convicted of these proposed crimes is expected to be minimal.

Persons serving a sentence longer than 18 months are incarcerated in DOC facilities. Currently, the average total cost per inmate, including overhead, is estimated at \$1,850 per month. This bill alone, however, should not create the need for additional beds, personnel, or facilities. Excluding overhead, the average cost of housing a new DOC inmate (including medical care and variable costs) is \$350 per month. Excluding medical care, the average variable costs total \$120 per month.

Persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to local detention facilities. For persons sentenced to a term of between 12 and 18 months, the sentencing judge has the discretion to order that the sentence be served at a local facility or DOC. The State reimburses counties for part of their incarceration costs, on a per diem basis, after a person has served 90 days. State per diem reimbursements for fiscal 2005 are estimated to range from \$14 to \$58 per inmate depending upon the jurisdiction. Persons sentenced to such a term in Baltimore City are generally incarcerated in DOC facilities. The Baltimore City Detention Center, a State-operated facility, is used primarily for pretrial detentions.

DHMH special fund expenditures and OAH general fund expenditures are not expected to increase in fiscal 2005 or the out-years because the bill is not expected to increase the number of hearings.

Local Revenues: Revenues could increase minimally as a result of the bill's monetary penalty provisions from cases heard in the circuit courts.

Local Expenditures: Expenditures could increase minimally as a result of the bill's incarceration penalties. Counties pay the full cost of incarceration for people in their facilities for the first 90 days of the sentence, plus part of the per diem cost after 90 days. Per diem operating costs of local detention facilities are expected to range from \$29 to \$97 per inmate in fiscal 2005.

Additional Information

Prior Introductions: None.

Cross File: SB 330 (Senator Hollinger) (By Request) – Education, Health, and Environmental Affairs.

Information Source(s): Office of Administrative Hearings, Department of Health and Mental Hygiene, Department of Public Safety and Correctional Services, Department of Legislative Services

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Appendix 1
Existing Misdemeanor Penalties, Hearing Cost Reimbursement, and Hearing Authority and Proposed Changes Made Under HB 1321

<u>Health Occupation</u>	<u>Maximum Existing Misdemeanor Penalties</u>	<u>Maximum Misdemeanor Penalties Under HB 1321</u>	<u>Convicted Person Required to Pay Hearing Costs</u>	<u>Delegated Hearing Authority to Committee</u>
Acupuncturists	\$1,000 or 1 year in prison, or both	\$5,000 or 3 years in prison, or both	Yes, under current law	Yes, under HB 1321
Audiologists, Hearing Aid Dispensers, and Speech-Language Pathologists	\$500 or 90 days in prison, or both	\$5,000 or 3 years in prison, or both	Yes, under HB 1321	Yes, under HB 1321
Chiropractors	First offense: \$2,000 or 6 months in prison Subsequent offense: \$6,000 or 1 year in prison	First offense: \$5,000 or 3 years in prison Subsequent offense: \$10,000 or 3 years in prison	Yes, under HB 1321	Yes, under HB 1321
Dentists and Dental Hygienists	Dentists: First offense: \$2,000 or 6 months in prison Subsequent offense: \$6,000 or 1 year in prison Dental hygienists: \$1,000 Dental lab or advertising violations: \$2,000 or 6 months in prison	Dentists: First offense: \$5,000 or 3 years in prison Subsequent offense: \$6,000 or 3 years in prison Dental hygienists: \$5,000 Dental lab or advertising violations: \$5,000 or 3 years in prison	Yes, under HB 1321	Yes, under HB 1321
Morticians	\$500 or 1 year in prison, or both	\$5,000 or 3 years in prison, or both	Yes, under current law	Yes, under HB 1321

Nurses	All violations except for failing to report employment or placement: \$5,000 or 1 year in prison, or both Failing to report employment or placement: First offense: \$100 Subsequent offense: \$500 or 6 months in prison, or both	No change	No	Yes, under HB 1321
Nursing Home Administrators	First offense: \$1,000 Subsequent offense: \$5,000 or 6 months in prison, or both	No change	Yes, under HB 1321	Yes, under HB 1321
Occupational Therapists	\$1,000 or 1 year in prison, or both	\$5,000 or 3 years in prison, or both	Yes, under HB 1321	Yes, under current law a committee of 2 or more board members
Optometrists	\$500 or 6 months in prison, or both	\$5,000 or 3 years in prison, or both	Yes, under HB 1321	Yes, under HB 1321
Pharmacists	Display, permit, information, labeling, or inspecting violations: \$1,000 Distribution, practicing without a license, false representation, operating without a permit, or misrepresentation violations: \$1,000 or 1 year in prison, or both	Display, permit, information, labeling, or inspecting violations: \$5,000 Distribution, practicing without a license, false representation, operating without a permit, or misrepresentation violations: \$5,000 or 3 years in prison, or both	Yes, under HB 1321	Yes, under HB 1321

Physical Therapists	\$1,000	\$5,000 or 3 years in prison, or both	Yes, under HB 1321	Yes, under current law a committee of 3 or more board members
Podiatrists	\$5,000 or 90 days in prison	No change	Yes, under current law	Yes, under HB 1321
Counselors and Therapists	\$500 or 6 months in prison, or both	\$5,000 or 3 years in prison, or both	Yes, under HB 1321	Yes, under HB 1321
Psychologists	\$500 or 6 months in prison, or both	\$5,000 or 3 years in prison, or both	Yes, under HB 1321	Yes, under HB 1321
Social Workers	\$500 or 90 days in prison	\$5,000 or 3 years in prison	Yes, under current law	Yes, under HB 1321
