

Department of Legislative Services

Maryland General Assembly

2004 Session

FISCAL AND POLICY NOTE

Senate Bill 334 (Senators Jacobs and Hooper)

Education, Health, and Environmental Affairs

State Board of Massage Therapy Examiners - Licensure, Certification, and Regulation

This bill provides for licensure of massage therapists and certification of massage practitioners by the newly created State Board of Massage Therapy Examiners in the Department of Health and Mental Hygiene (DHMH). On July 1, 2005, it repeals the existing Massage Therapy Advisory Committee (MTAC) of the State Board of Chiropractic Examiners and transfers all of the powers, duties, assets, liabilities, employees, and related materials and equipment to the new massage board. It also allows for the establishment or recognition of a Massage Therapist Rehabilitation Committee. The bill creates a continuing, nonlapsing State Board of Massage Therapy Examiners Fund to cover the board's direct and indirect costs. Subject to the Program Evaluation Act, the board terminates July 1, 2015. The Legislative Auditor must audit the fund's accounts and transactions. Provisions of the bill repealing the existing committee and establishing the new board take effect July 1, 2005. Other provisions of the bill take effect October 1, 2004.

Fiscal Summary

State Effect: No effect on revenues. The FY 2005 proposed budget includes \$703,167 for the State Board of Chiropractic Examiners, of which an estimated \$414,755 is for MTAC. No effect in FY 2005 because regulatory authority would not be transferred to the massage therapy board until FY 2006. Special fund expenditures could increase by \$14,100 in FY 2006 to reflect reclassification of two existing positions. Future years reflect inflation. The Office of Legislative Audits reports that it can audit the fund with existing resources.

(in dollars)	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Revenues	\$0	\$0	\$0	\$0	\$0
SF Expenditure	0	14,100	14,700	15,400	16,100
Net Effect	\$0	(\$14,100)	(\$14,700)	(\$15,400)	(\$16,100)

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 provides for the transition of regulatory authority from the State Board of Chiropractic Examiners to the new board in several ways.

- On July 1, 2005, existing certificate and registration holders may qualify for an equivalent massage board license or certificate without meeting the bill's education, experience, and examination requirements.
- On July 1, 2005, a person who holds a certificate as a massage therapist or registration as a massage practitioner is considered licensed as a massage therapist or certified as a massage practitioner by the massage board for the remainder of the license's or certificate's term. On expiration, the person may qualify for renewal of the massage board license or certificate.
- New reinstatement provisions allow, on or after July 1, 2005, a person holding a certificate or registration issued by the State Board of Chiropractic Examiners who has not renewed it in a timely manner, to qualify for reinstatement as if the person had held a license or certificate issued by the massage board.
- Before July 1, 2005, a person who has completed or partially completed any education, experience, or examination requirements for a certificate or registration is considered to have completed or partially completed the same requirement for a license or certificate issued by the massage board.

The board will consist of seven members: four licensed massage therapists; one certified massage practitioner; one massage therapy instructor; and one consumer. Board members will serve four-year terms. The board must appoint an executive director.

The board may set reasonable license and certificate fees, which will be deposited into the special fund. Unspent funds may not be transferred or revert to the State's general fund. No other State money may be used to support the fund.

Unless authorized to practice under the bill, a person may not use the title "massage therapist," "MT," "licensed massage therapist," "CMT," "massage practitioner," "MP," "licensed massage practitioner," "RMP," or any other term with the intent to represent that the person practices massage therapy.

A person may not buy, sell, or fraudulently obtain a license or a diploma required under this bill. Anyone who practices or attempts to practice massage therapy without a license is guilty of a misdemeanor and on conviction is subject to: (1) for a first offense, a fine of up to \$2,000 or a prison term of up to six months; or (2) for each subsequent offense, a fine of up to \$6,000 or a prison term of up to one year. A person convicted of a misdemeanor under this bill must reimburse the board for the board's direct costs, including court reporting services and expert witness fees, incurred as a result of the prosecution.

The board must report to the Senate Education, Health, and Environmental Affairs Committee and the House Health and Government Operations Committee by December 31, 2006 to assess the appropriateness of fees charged and the board's ability to be self-sufficient given the greater workload.

The bill requires a full evaluation of the board by July 1, 2014.

Current Law: Chapters 673 and 678 of 1996 gave the State Board of Chiropractic Examiners responsibility for regulating massage therapy. Regulation of massage therapy is differentiated by the setting in which it is practiced. If outside of a health care facility, it is deemed to be nontherapeutic massage and individuals are registered as massage practitioners. A health care provider licensed or certified under the Health Occupations Article may not refer patients to a person who is not a certified massage therapist. Otherwise, they must be certified as massage therapists.

The board sets requirements for issuing and biennially renewing certificates and registrations to practice massage therapy. The board also sets conditions under which it may deny a certificate or registration to any applicant, reprimand any certificate or registration holder, place a certificate or registration holder on probation, or suspend or revoke a certificate or registration. However, a Massage Therapy Advisory Committee within the chiropractic board consisting of six members – two licensed chiropractors and four certified massage therapists – assists the board in several ways. The advisory committee develops and recommends board regulations, a code of ethics for the practice

of massage therapy, and certification and registration requirements. The committee also evaluates applicant credentials, evaluates massage therapy education programs for board approval, considers complaints brought to the board, keeps a record of proceedings, and submits an annual report to the board.

The board sets fees for issuing and renewing certificates and registrations to practice massage therapy. All fees collected are distributed to the State Board of Chiropractic Examiners Fund.

The county commissioners of Charles and Washington counties may adopt ordinances or regulations relating to massage establishments and the practices of massage therapists, massage practitioners, and any other individuals who provide massage for compensation.

Background: There are 2,471 certified massage therapists and 124 registered massage practitioners in Maryland.

A 2003 MTAC survey of chiropractors and massage therapists found that, out of 548 respondents, 473 agreed an independent body of massage therapists should oversee the massage regulatory program and 75 disagreed. If a separate regulatory body for massage therapists meant a fee increase would be required, 282 respondents agreed with establishing a separate board while 266 disagreed.

A survey conducted by the Maryland Chiropractic Association (MCA) found that chiropractors believe reducing the board's regulatory oversight of massage therapists might result in reducing renewal fees for chiropractors. However, MCA believes that massage therapy should continue to be fully regulated by the chiropractic board.

The Commission on Massage Therapy Accreditation sees the establishment of a massage board as the next step of self-monitoring for massage therapists in the State.

State Revenues: DHMH estimates special fund revenues attributable to regulation of massage therapy at \$625,000 in fiscal 2005, \$250,000 in fiscal 2006, \$600,000 in fiscal 2007, \$230,000 in fiscal 2008, and \$580,000 in fiscal 2009. As the requirements for licensure and certification under the new board mirror those for certification and registration under the State Board of Chiropractic Examiners and the fees are not expected to change, the transfer of regulatory authority from one board to another will not result in any new revenues being collected than otherwise would be. DHMH advises that recent growth is expected to continue but at a slower pace and with some attrition. The revenue pattern is attributable to biennial renewal and initial fees being greater than renewal fees. The application fee is \$100, the initial certification or registration fee is \$200, and the renewal fee is \$200.

State Expenditures: The fiscal 2005 proposed budget includes \$703,167 for the State Board of Chiropractic Examiners, of which an estimated \$414,755 is for MTAC. There is no effect on expenditures in fiscal 2005 because regulatory authority would not be transferred to the massage therapy board until fiscal 2006. Special fund expenditures could increase by \$13,896 in fiscal 2006, reflecting the reclassification of MTAC's program manager and office clerk under the new massage board. Future years reflect inflation.

The Office of Legislative Audits reports that it can audit the State Board of Massage Therapy Examiners Fund with existing resources.

Additional Information

Prior Introductions: None.

Cross File: HB 421 (Delegate Hubbard) – Health and Government Operations.

Information Source(s): Washington County, Charles County, Department of Health and Mental Hygiene, Department of Legislative Services (Office of Legislative Audits)

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Analysis by: Lisa A. Daigle

Direct Inquiries to:
(410) 946-5510
(301) 970-5510