

Department of Legislative Services
Maryland General Assembly
2004 Session

FISCAL AND POLICY NOTE

House Bill 917 (Delegate Barve)
Health and Government Operations

**Board of Examiners of Nursing Home Administrators - Inactive Status -
Hearings - Penalties**

This bill: (1) allows the Board of Examiners of Nursing Home Administrators' to issue an inactive license; (2) increases misdemeanor penalties; (3) allows the board to impose an administrative monetary penalty; (4) allows the board to impose a civil fine; (5) allows the board to delegate its hearing authority; and (6) prohibits an order of the board from being stayed pending judicial review.

Fiscal Summary

State Effect: Potential minimal increase in general fund revenues and expenditures due to the bill's penalty provisions and due to the number of inactive licenses issued by the board. Potential significant increase in general fund revenues due to the board-imposed civil fine. No effect on 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 and for violators who are assessed a board-imposed administrative penalty.

Analysis

Bill Summary:

Inactive License

The board must place a licensee on inactive status if the individual submits an application and pays the required fee. An inactive licensee may not practice as a nursing home administrator in Maryland.

The board must license an individual on inactive status if the individual: (1) submits a completed application form within five years of obtaining inactive status; (2) complies with renewal requirements; (3) meets continuing education requirements; (4) has not practiced while on inactive status; (5) pays the appropriate fees; and (6) is otherwise entitled to be licensed. The board may not reactivate a license for a person who fails to apply for reactivation within the five-year period unless the person submits a new application, completes a one-month administrator refresher program, and passes the State's standards examination.

Penalties

If after a licensee hearing for failing to meet board standards, the board finds grounds to reprimand a licensee, place the licensee on probation, or suspend or revoke a license, the board may impose an administrative penalty of up to \$10,000 instead of or in addition to suspending or revoking the license or in addition to placing the licensee on probation. This penalty may also be imposed when a licensee waives his or her right to a hearing and the board finds grounds to take disciplinary action.

The board must adopt regulations setting standards for imposing monetary penalties. Any of these penalties must go to the State's general fund.

The bill establishes a maximum \$50,000 civil fine for any person who practices without a license, misrepresents himself or herself as licensed, commits license fraud, or operates a nursing home without a licensed nursing home administrator. The fine is assessed by the board and is paid into the State's general fund.

The bill also increases the misdemeanor penalties for an individual who is found guilty of violating any provision of the Nursing Home Administrators Licensing Act to a maximum of \$5,000 for the first offense and \$10,000 and/or three years imprisonment for any subsequent violation of the same provision.

Practicing Without a License

The board may issue a cease and desist order for practicing nursing home administration without a license or with an unauthorized person or for supervising or aiding an unauthorized person practice nursing home administration.

An action for aiding and abetting may be maintained in the State's or board's name to enjoin the unauthorized practice of nursing home administration or conduct that is grounds for disciplinary action. An action may be brought: by the board, in its own name; the Attorney General, in the State's name; or by a State's Attorney in the State's name. Proof of actual damage or that any person will sustain any damage if an injunction is not granted is not required. Any action is in addition to any criminal prosecution for the unauthorized practice of nursing home administration or disciplinary action.

Hearings

The board chairman may delegate the board's hearing authority to a committee of three or more board members. The committee must hold an evidentiary hearing and prepare a recommended decision for a quorum of the board's approval.

Current Law: An individual must be licensed by the board to practice as a nursing home administrator in Maryland.

The board must investigate and take appropriate action on any complaint that alleges a licensee failed to meet any board standards. The board may deny a license or limited license to any applicant, reprimand a licensee or limited licensee, place any licensee or limited licensee on probation, or suspend or revoke a license or limited license if the individual commits a variety of acts, including:

- fraudulently or deceptively obtaining or using a license;
- being convicted of or pleading guilty or *nolo contendere* to a felony or to a crime involving moral turpitude;
- providing professional services while under the influence of alcohol or any narcotic or controlled dangerous substance or other drug in excess of therapeutic amounts or without valid medical indication;
- practicing nursing home administration with an unauthorized person or supervising or aiding an unauthorized person in the practice of nursing home administration; or
- submitting a false statement to collect a fee.

A person who violates any provision of the Maryland Nursing Home Administrators Licensing Act is guilty of a misdemeanor and on conviction is subject to a maximum \$1,000 fine for the first offense and up to a \$5,000 fine and/or six months imprisonment for any subsequent violation of the same provision.

Background: There are 592 licensed nursing home administrators in the State.

The Board of Examiners of Nursing Home Administrators charges a \$100 license fee to license nursing home administrators. Those licenses are renewed every two years. Unlike other health occupations boards, the Board of Examiners of Nursing Home Administrators is supported with general funds instead of special funds. The board's fees are directly deposited into the general fund. There is no statutory requirement that the board set fees to produce funds to approximate the cost of maintaining the board.

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 and as a result of monetary penalties imposed instead of or in addition to other actions taken against a licensee. General fund revenues potentially could increase significantly from board-imposed civil fines, depending on the number of fines imposed and the fine amounts.

General fund revenues also could increase minimally depending on the number of inactive licenses the board issues. The board expects to charge a \$50 inactive license fee.

State Expenditures: General fund expenditures could increase minimally as a result of the bill's incarceration penalty due to more people being committed to Division of Correction facilities for longer periods of time and increased payments to counties for reimbursement of inmate costs. The number of people convicted of this proposed crime is expected to be minimal.

Board 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 penalty. 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: None.

Information Source(s): Department of Health and Mental Hygiene, Department of Legislative Services

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