

Department of Legislative Services
 Maryland General Assembly
 2005 Session

FISCAL AND POLICY NOTE
Revised

House Bill 873

(Delegate Mandel, *et al.*)

Health and Government Operations

Finance

**State Board of Examiners of Nursing Home Administrators - Inactive Status -
 Penalties and Disciplinary Actions**

This bill: (1) provides the State Board of Examiners of Nursing Home Administrators with additional disciplinary powers; (2) allows the board to impose a civil fine; (3) prohibits a board order from being stayed pending judicial review; (4) allows the board to issue an inactive license; and (5) requires a nursing home or appropriate nursing home authority to immediately notify the board if an administrator is replaced for an unexpected cause.

Fiscal Summary

State Effect: Potential minimal increase in general fund revenues due to the bill's civil penalty provisions. Special fund board licensing revenues could increase by \$250 in FY 2006. Future year licensing revenues assume biennial licensure and inactive licensees becoming active licensees after a two-year period. No effect on expenditures.

(in dollars)	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
GF Revenue	-	-	-	-	-
SF Revenue	300	300	800	800	1,300
Expenditure	\$0	\$0	\$0	\$0	\$0
Net Effect	\$300	\$300	\$800	\$800	\$1,300

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

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary:

Board Powers

The board may issue a cease and desist order for practicing nursing home administration without a license or with an unauthorized person. A cease and desist order also may be issued for supervising or aiding an unauthorized person in the practice of nursing home administration. An action for aiding and abetting may be maintained in the name of the State or the board to enjoin the unauthorized practice of nursing home administration or conduct that is grounds for disciplinary action. The action may be brought by: (1) the board, in its own name; (2) the Attorney General, in the State's name; or (3) a State's Attorney, in the State's name.

An action must be brought in the county where the defendant resides or engages in the acts sought to be enjoined. Proof of actual damage or that any person will sustain damage if the injunction is not granted is not required for an action. An action is in addition to, and not instead of, criminal prosecution for the unauthorized practice of nursing home administration or any disciplinary action by the board.

Civil Fine

If, after a hearing, the board finds there are grounds to take disciplinary action against a licensee, the board may impose a civil fine instead of suspending or revoking a license, or in addition to placing the licensee on probation, or suspending or revoking the license. A civil fine may not exceed \$1,000 for the first violation and \$5,000 for any subsequent violation of the same provision. If a licensee waives the right to a hearing after disciplinary procedures have been brought, and the board finds grounds for taking disciplinary action, the board may impose a maximum \$1,000 civil fine for a first violation and a maximum \$5,000 civil fine for any subsequent violation of the same provision, in addition to taking the disciplinary action. The fine must be paid into the State general fund.

Inactive License

A licensed nursing home administrator may be subsequently licensed as a nursing home administrator on inactive status and retain the original license number. An inactive license is valid for two years and a licensee must pay an inactive license fee set by the board and fulfill any other board requirements. An inactive licensee may not practice as a nursing home administrator in Maryland.

The board must issue a license to a licensee on inactive status if the licensee: (1) completes an application form for license reactivation before the two-year inactive status term expires; (2) complies with renewal requirements; (3) meets the board's continuing education requirements; (4) has not practiced as a nursing home administrator in Maryland while on inactive status; (5) pays board fees; (6) has been on inactive status for less than five years; and (7) is otherwise entitled to be licensed.

Before the board may reactivate an individual's license who has been on inactive status for five years or more, the individual must: (1) submit a new application; (2) pay board fees; (3) complete a board-approved one-month administrator refresher program; and (4) pass the State's standards examination.

If an administrator's inactive license expires before the individual returns to active licensure, the individual must meet the board's reinstatement requirements.

Current Law: An individual must be licensed by the board to practice as a nursing home administrator in Maryland. Currently, the board may not issue an inactive license. If a licensee leaves or is removed from an administrator position by death or another unexpected cause, the nursing home owner or other appropriate nursing home authority must immediately designate a licensed nursing home administrator to serve in that capacity.

Misdemeanor Penalty

A person who violates any provision of the State Board of Examiners of Nursing Home Administrators (including practicing without a license) is guilty of a misdemeanor and on conviction is subject to a maximum \$1,000 fine for a first offense and maximum penalties of a \$5,000 fine and/or six months imprisonment for any subsequent offense of the same provision.

Board Disciplinary Actions and Hearings

The board must investigate and may take disciplinary actions as to any complaint filed with the board that alleges a licensee has not met any of the board's standards. Disciplinary actions the board may take include: (1) denying a license or limited license; (2) reprimanding a licensee or holder of a limited license; (3) placing a licensee or holder of a limited license on probation; or (4) suspending or revoking a license or limited license.

Disciplinary actions may be taken if an individual takes a variety of illegal actions, including fraudulently or deceptively using a license; being convicted or pleading guilty or *nolo contendere* to a felony or to a crime involving moral turpitude; or providing professional services while under the influence of alcohol or using any narcotic or controlled dangerous substance.

Before the board may take a disciplinary action, the board must give the individual against whom an action is contemplated an opportunity for a board hearing. Any person aggrieved by a final board decision, except for complaints alleging a licensee has failed to meet a board standard, in a contested case may appeal that decision to the Board of Review and taken any further allowable appeal. Any person aggrieved by a final board decision regarding a complaint alleging a licensee failed to meet a board standard may take a direct judicial appeal.

Background: There are 562 licensed nursing home administrators in Maryland. The board assumes five licensees will annually apply for an inactive license and those five will apply for licensure reactivation after two years.

Generally, with certain statutory exceptions, misdemeanor offenses are heard in the District Court and felony offenses are heard in the circuit courts. All jury trials are heard in the circuit courts.

State Revenues: General fund revenues could increase minimally as a result of the bill's civil monetary penalty provisions.

Special fund revenues could increase by \$250 in fiscal 2006 assuming five licensed nursing home administrators apply for an inactive license and each pay a \$50 fee. Future year special fund licensing revenues assume biennial inactive licensure and inactive licensees becoming active licensees again at the end of the two-year period. Further, special fund revenues could potentially increase minimally depending on the number of civil fines imposed.

Additional Information

Prior Introductions: None.

Cross File: None.

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

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