

Department of Legislative Services
 Maryland General Assembly
 2006 Session

FISCAL AND POLICY NOTE

House Bill 121 (Delegate Hammen)
 (Chair, Health and Government Operations Committee)
 Health and Government Operations

State Board of Physicians - Sunset Extension and Program Evaluation

This bill extends the termination date of the State Board of Physicians (MBP) from July 1, 2007 to July 1, 2013. The bill also clarifies that the next program evaluation undertaken of the board shall be a full review without the necessity of a preliminary evaluation.

The bill takes effect June 1, 2006.

Fiscal Summary

State Effect: Net general fund revenues could decrease by \$29,700 in FY 2007, and net special fund revenues could increase by \$29,700 in FY 2007. Net MBP special fund expenditures could increase by \$66,200 in FY 2007. Net revenue and expenditure estimates reflect the bill’s reallocation of funds among various State agencies and licensing patterns.

(in dollars)	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
GF Revenue	(\$29,700)	(\$6,500)	(\$30,300)	(\$6,600)	(\$30,900)
SF Revenue	29,700	6,500	30,300	6,600	30,900
SF Expenditure	66,200	73,000	77,800	83,100	88,800
Net Effect	(\$66,200)	(\$73,000)	(\$77,800)	(\$83,100)	(\$88,800)

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

Local Effect: None.

Small Business Effect: Potential minimal increase to small business expenditures due to possible increased licensing and renewal fees.

Analysis

Bill Summary: In addition to extending MBP's termination date and modifying the evaluation process, this bill makes a variety of changes to board operations and funding, as described below.

Distribution of Fees

This bill requires MBP to pay all collected fees, including physician assistant fees, to the Comptroller of the State. If the Governor does not include at least \$750,000 in the budget for the operation of the Health Manpower Shortage Incentive Program (Health Manpower Program) and the Janet L. Hoffman Loan Assistance Repayment Program (Hoffman Program), the Comptroller must distribute: (1) 14% of the fees to the Office of Student Financial Assistance (OSFA) to be distributed evenly between two specified loan and grant programs for health profession students; and (2) the remainder of the fees to the MBP Fund. If the Governor includes at least \$750,000 in the budget for these programs, the Comptroller must distribute all fees to the MBP Fund.

The bill abolishes the Physician Rehabilitation Committee, repeals the requirement that MBP contract with a nonprofit entity for physician rehabilitation services, and provides for a physician rehabilitation program that can be run by the board or an outside entity with whom the board contracts. The bill also eliminates the exclusion from MBP's current fee distribution structure of the \$50 fee charged to licensees used to fund physician rehabilitation and peer review activities.

Disciplinary Actions and Procedures

The bill authorizes the board to refer any cases for a formal hearing to a subcommittee consisting of three or more board members rather than solely to the Office of Administrative Hearings (OAH).

The bill requires disciplinary proceedings following formal charging by MBP to be open to the public, providing that the licensee or the complainant may, for good cause shown, request the proceeding to be closed. The bill also requires MBP to adopt regulations that specify when a proceeding may be closed for good cause shown.

The bill authorizes MBP to impose a civil penalty of up to \$1,000 against a hospital, related institution, alternative health system, or employer for:

- failure to file with the board a report that the care provider limited, reduced, otherwise changed, or terminated any licensed respiratory care practitioner for any reasons that might be grounds for disciplinary action; and
- failure to report a disciplinary action against a certified radiation oncology/therapy technologist, certified medical radiation technologist, or certified nuclear medicine technologist.

The bill maintains exceptions to these filing and reporting requirements for: (1) respiratory care practitioners and technologists who are in an alcohol or drug treatment program; and (2) if the action or condition of the practitioner or technologist did not cause injury to any person during the practice of the practitioner or technologist. All penalties collected under these provisions must be remitted to the general fund.

The bill also prohibits licensed physicians, hospitals, related institutions, alternative health systems, or employers from employing uncertified radiation oncology/therapy technologists, medical radiation technologists, or nuclear medicine technologists. The bill authorizes the board to impose a civil penalty of up to \$1,000 for violations of this provision. Such penalties would be paid into the general fund.

Reporting

The board, the Administrative Office of the Courts, and the chief judge of the District Court must develop a procedure to facilitate the reporting of information regarding conviction of or entry of a plea of guilty or *nolo contendere* by a physician for any crime involving moral turpitude by the court to the board and alternative health systems.

Reviews and Reports to the Legislature

The Department of Health and Mental Hygiene (DHMH) and the Office of the Attorney General must review the process for the investigation of self-referral cases by health occupations boards; findings and recommendations regarding a revised process must be reported to the Governor and specified legislative committees by July 1, 2006.

The board and DHMH also must report to the Governor and specified legislative committees, by July 1, 2006, on a jointly developed strategy to reduce investigative caseloads and complaint backlogs at MBP. The board must reduce investigative caseloads and complaint backlogs by July 1, 2007.

The Department of Legislative Services (DLS) must to report to the Governor and specified legislative committees by November 1, 2007, on MBP's complaint resolution process.

DHMH and the Department of Budget and Management (DBM) must, by September 1, 2006: (1) review job classifications for investigators at MBP and other health occupations boards; (2) determine if job classifications for investigative positions are appropriate to the skill levels required by investigators; (3) recommend revised job classifications if it is determined to be appropriate; and (4) report to the Governor and specified legislative committees on the findings, recommendations, and any changes necessary to implement the recommended changes.

Administrative Changes

The bill repeals the requirement that the board elect a secretary-treasurer and requires MBP to make regulatory changes to reflect board procedures and to implement recommendations made in the *Report on the Maryland Board of Physicians' Investigative Processes and Optimal Caseload* (2004).

The bill also amends the statute regarding confidentiality of records to account for the fact that the board is no longer required to use the Medical and Chirurgical Faculty of the State of Maryland (MedChi) for peer review services and can contract with another nonprofit entity to provide these services.

The bill cross references the definition of "performing acupuncture" under § 14-504 of the Health Occupations Article into the definition of "practice medicine."

Current Law: MBP is one of approximately 70 entities currently subject to evaluation under the Maryland Program Evaluation Act (sunset law). Its termination date is July 1, 2007. The sunset law requires DLS to prepare a preliminary evaluation report on each governmental activity or unit to be evaluated on or before December 15 of the second year before the evaluation date.

Administration

The board is required to elect a chairman, secretary-treasurer, and any other officers that it considers necessary. Chapter 252 of 2003 (Senate Bill 500) required the board to contract with a nonprofit entity to operate a physician rehabilitation program known as the "Physician Rehabilitation Committee." The board is required to assess a fee, not to exceed \$50, against licensees to fund the rehabilitation program and peer review activities.

Chapter 252 of 2003 also repealed the requirement that MBP use MedChi to repeal peer review services and allowed the board to contract with another nonprofit entity to provide these services.

Section 14-101 of the Health Occupations Article includes “performing acupuncture” as part of the definition of the practice of medicine. The same section of the Article provides a general descriptive definition of performing acupuncture. Section 14-504 of the Health Occupations Article details the registration and training requirements physicians must meet in order for the board to register a physician who is not a licensed acupuncturist to perform acupuncture.

Distribution of Fees

MBP is authorized to set fees to approximate the cost of maintaining the board. With the exception of physician assistant fees, MBP distributes collected fees in the following manner:

- The \$50 fee collected from licensees for the physician rehabilitation program and peer review activities is used to fund those programs.
- All other fees are paid to the Comptroller. If the Governor does not include at least \$750,000 in the budget for the operation of the Health Manpower Program and Hoffman Program, the Comptroller must distribute: (1) 14% of the fees to OSFA to be used as follows: (a) one-half to make grants under Health Manpower Program; and (b) one-half to make grants under the Hoffman Program; and (2) the remainder of the fees to the MBP Fund. If the Governor includes at least \$750,000 in the budget for these programs, the Comptroller must distribute all fees to the MBP Fund.

All physician assistant fees are paid to the Comptroller. Eighty percent of these fees go to the MBP Fund (special funds); 20% of the collected fees go to the general fund.

Disciplinary Procedure

The board is required to give a licensee the opportunity for a hearing before a hearing officer from OAH before taking disciplinary action against a licensee.

In Maryland, all aspects of the physician disciplinary process are closed to the public until judicial review. The board and any of its investigatory bodies may not disclose to the public any information from the proceedings, records, or files of the board. Exceptions to this rule are (1) general licensure, certification, or registration information

obtained by the board, if made in a proper request; and (2) information contained in a licensee's MBP individual profile.

A licensee's MBP individual profile is available to the public on the MBP web site. Licensee profiles contain (1) a description of any disciplinary action taken by the board against the licensee within the most recent 10-year period; (2) a description of any final disciplinary action taken by a licensing board in any other state or jurisdiction against the licensee within the most recent 10-year period; (3) the number of medical malpractice final court judgments and arbitration awards against the licensee within the most recent 10-year period for which all appeals have been exhausted as reported to the board; (4) the number of medical malpractice settlements involving the licensee if there are three or more with a settlement amount of \$150,000 or greater within the most recent 5-year period as reported to the board; and (5) medical education and practice information about the licensee.

Maryland law does not require the board to impose any civil penalty against health care providers for:

- failure to file with the board a report that the care provider limited, reduced, otherwise changed, or terminated any licensed respiratory care practitioner for any reasons that might be grounds for disciplinary action;
- failure to report a disciplinary action against a certified radiation oncology/therapy technologist, certified medical radiation technologist, or certified nuclear medicine technologist; or
- employing uncertified radiation oncology/therapy technologists, medical radiation technologists, or nuclear medicine technologists.

Reporting

Each court is required to report to MBP each conviction of or entry of a plea of guilty or *nolo contendere* by a physician for any crime of moral turpitude. Maryland courts have defined "moral turpitude" as "an act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellow men, or to society in general, contrary to the accepted and customary rule of right and duty between man and men." *Attorney Grievance Cmm'n v. Barnes*, 286 Md. 474, 408 A.2d 719 (1979).

Background: MBP is the agency of DHMH responsible for the licensing and discipline of various health care practitioners. The primary duties of the board include:

- licensing physicians and other health care providers, including physician assistants, respiratory care practitioners, medical radiation technologists, nuclear medicine technologists, and radiation oncology therapy technologists to practice in Maryland;
- investigating complaints against licensees;
- disciplining licensees who violate the Maryland Medical Practice Act (§ 14-404 of the Health Occupations Article);
- taking action against the license of practitioners who fail to meet certain standards of medical care or break licensure laws;
- providing consumer information on licensing and licensees who have been charged or sanctioned with violations of the Maryland Medical Practice Act; and
- providing information on licensee credentials and training.

The bill's provisions stem from several recommendations made in the *Sunset Review: Evaluation of the State Board of Physicians* (October 2005) conducted by DLS.

State Revenues: The bill changes several funding allocations.

Repeal of \$50 Assessment for Physician Rehabilitation Services and Peer Review Activities: MBP special fund revenues could potentially decrease by \$94,920 in fiscal 2007, and OSFA special funds revenues would increase by the same amount. The bill also eliminates the exclusion from MBP's current fee distribution structure of the \$50 fee used to fund physician rehabilitation and peer review activities. MBP currently contracts with another entity for peer review services and operates its own rehabilitation program. MBP would still be responsible for providing these services, but the fee would no longer be specifically excluded from MBP's current fee distribution structure.

Currently, MBP builds this \$50 assessment into its licensure and renewal fees. MBP would continue to collect these funds as part of its licensure fees. Since this bill requires this \$50 assessment to be distributed in the same manner as other MBP fees, it would become subject to the standard MBP fee distribution, including the 14% diversion to OSFA if the Governor does not include \$750,000 in the State budget for specified programs. MBP estimates that the inclusion of this assessment in MBP's current fee distribution structure could result in the diversion of \$94,920 to OSFA. Future year

estimates reflect MBP's biennial licensure process and assumes 1% inflation in licensure fees.

To date, these funds have not been included in the budget nor have they been included in the State's fiscal 2007 budget for these programs.

Redistribution of Physician Assistant Fees: Currently, physician assistant fees are distributed between the MBP Fund and the general fund. The bill redistributes physician assistant fees between the MBP Fund and OSFA special funds. As a result, general fund revenues would decrease by \$29,745 in fiscal 2007 and \$6,475 in fiscal 2008. MBP special fund revenues would increase by at least \$8,924 in fiscal 2007 and at least \$1,943 in fiscal 2008. OSFA special fund revenues would increase by \$20,821 in fiscal 2007 and \$4,532 in fiscal 2008. Future year estimates reflect MBP's biennial licensure process and assume 1% inflation in licensure fees.

MBP currently distributes 80% of the physician assistant fees it collects to the MBP Fund and 20% to the general fund. This bill requires MBP to distribute 86% of the physician assistant fees it collects to the MBP Fund and 14% to OSFA for specified programs if the Governor does not include \$750,000 for Health Manpower Program and Hoffman Program in the State budget. If the Governor does provide \$750,000 for these programs in the State budget, then 100% of the physician assistant fees will go to the MBP Fund. It is estimated that MBP will collect \$148,725 in physician assistant licensing and renewal fees in fiscal 2007 and \$32,375 in fiscal 2008. Under the current distribution, \$29,745 and \$6,475 of these fees would go to the general fund in fiscal 2007 and fiscal 2008, respectively. Under the bill's distribution scheme, none of these fees will go to the general fund, and 14% of these fees, or \$20,821 in fiscal 2007 and \$4,532 in fiscal 2008, will go to OSFA. This represents an increase in MBP special fund revenue of \$8,924 in fiscal 2007 and at least \$1,943 in fiscal 2008. General fund revenues would decrease by \$29,745 and \$6,475 in fiscal 2007 and fiscal 2008, respectively.

Exhibit 1
Effect of Proposed Fee Allocations on OSFA

<u>Item</u>	<u>Increase in OSFA Funding in FY 2007</u>
Repeal of \$50 physician rehabilitation fee	\$94,920
Redistribution of Physician Assistant Fees	\$20,821
Total Increase in OSFA Funding for FY 2007	\$115,741

State Expenditures: MBP special fund expenditures could increase by an estimated \$66,237 in fiscal 2007, which reflects the bill's June 1, 2006 effective date. This estimate

reflects the cost of hiring one part-time Assistant Attorney General and one part-time administrative officer to assist with the six disciplinary hearings MBP estimates would be assigned to a subcommittee of the board. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operational expenses.

Salaries and Fringe Benefits	\$52,947
Other Operational Expenses	<u>13,290</u>
Total FY 2007 State Expenditures	\$66,237

Future year expenditures reflect: (1) full salaries with 4.6% annual increases and 3% employee turnover; and (2) 1% annual increases in ongoing operating expenses.

MBP advises that it will need a part-time medical consultant to assist with the six disciplinary hearings it predicts will be handled by the MBP subcommittee in fiscal 2007. DLS disagrees with this assessment and believes the additional hearing responsibilities can be handled with existing consulting staff.

Since DBM determines the amount it gives to each agency for OAH-related expenditures based on the number of OAH case hours the agency uses per year, DBM would reduce its allocation to MBP for OAH-related expenditures if MBP used OAH for six fewer hearings. Therefore, MBP special fund expenditures would not decrease by using OAH for fewer hearings. OAH advises that the reduction of its total caseload by six MBP cases would not result in a reduction in OAH's total allocation by DBM and would be passed through to other agencies (including MBP and DHMH) that use OAH services.

Small Business Effect: Potential increase in expenditures to small businesses. Since many physicians practice in small business settings, increases in licensing and renewal fees to cover MBP operations could be an increased expenditure to small businesses.

Additional Information

Prior Introductions: None.

Cross File: None.

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

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ncs/ljm

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