

Department of Legislative Services
 Maryland General Assembly
 2006 Session

FISCAL AND POLICY NOTE
Revised

House Bill 1145 (Delegate McHale)
 Health and Government Operations Education, Health, and Environmental Affairs

State Board of Dietetic Practice - Licensing Provisions - Changes

This bill makes various changes to the Maryland Licensed Dietitian-Nutritionists Act.

Fiscal Summary

State Effect: Board special fund expenditures would increase by \$2,700 in FY 2007 (\$3,600 annually) for board member compensation. Potential minimal increase in general fund revenues due to the bill’s penalty provisions. Potential increase in board special fund revenues due to any additional fee revenue. No effect on general fund expenditures.

(in dollars)	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
GF Revenue	-	-	-	-	-
SF Revenue	-	-	-	-	-
SF Expenditure	2,700	3,600	3,600	3,600	3,600
Net Effect	(\$2,700)	(\$3,600)	(\$3,600)	(\$3,600)	(\$3,600)

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

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary:

Increasing Board Powers and Board Compensation

The bill gives the State Board of Dietetic Practice the authority to issue subpoenas, summon witnesses, administer oaths, take affidavits, and take testimony (in addition to its current authority to issue subpoenas in connection with a board hearing) about matters relating to the board's jurisdiction. The board may issue subpoenas and administer oaths over the signature of an officer or the administrator of the board in connection with any investigation and any hearings or proceedings before it. If, without lawful excuse, a person disobeys a board subpoena, an order by the board to take any oath or testify, or answer a question, then, on petition of the board, a court of competent jurisdiction may punish the person for contempt of court. If after due notice, the individual against whom the action is contemplated fails or refuses to appear, the board may hear and determine the matter.

Board members are entitled to compensation in accordance with the board's budget.

Licensure Requirements

The bill consolidates and enhances the requirements for licensure as a dietitian-nutritionist. For example, an applicant for licensure must have:

- a baccalaureate degree from a college or university accredited by an educational accrediting association recognized by the Council on Higher Education and Accreditation; or
- a master's or doctoral degree from a college or university accredited by an educational accrediting association recognized by the Council on Higher Education and Accreditation in nutritional sciences (with emphasis in human nutrition), food and nutrition, dietetics, human nutrition, community nutrition, public health nutrition, or equivalent training approved by the board.

An applicant must also have satisfactorily completed a program of supervised clinical experience approved by the board. In addition, an applicant must submit to the board proof of certification by the Certification Board for Nutritional Specialists or proof of registration with the Commission on Dietetic Registration of the American Dietetic Association.

Exemptions from Licensure

The bill repeals provisions that allow individuals to practice without a license if they have initiated the application process but not yet completed it. The following individuals would no longer be allowed to practice dietetics without a license: (1) a registered dietitian who has recently become a resident of Maryland, or is a Maryland resident but is not licensed, and who has applied for licensure and has not had a license application denied in Maryland; and (2) an individual who has met the academic and experience requirements to be a licensed dietitian-nutritionist, has applied to take the licensing examination, and is waiting notification of the examination's results.

Waiver of Examination

The bill expands the board's authority to waive an examination requirement to include an individual who is certified by the Certification Board for Nutrition Specialists only if that individual became certified after meeting the examination requirements of that certification board or its predecessor.

Reinstatement of License and Inactive License

The bill repeals the provisions requiring the board to reinstate the license of a dietitian-nutritionist who has failed to renew the license for any reason if the dietitian-nutritionist meets specified requirements. Instead, the bill allows the board to place a licensee on inactive status if the licensee submits an application to the board and pays the license fee. The board must reactivate the license of an individual on inactive status if the individual satisfies the board's continuing education requirements and pays the reactivation fee. The board must reinstate the license of a person who failed to renew a license if the individual is otherwise entitled to be licensed, satisfies the board's continuing education requirements, pays the reinstatement fee, and applies to the board for reinstatement of the license within five years after the license expired. An individual who fails to apply for reinstatement of a license within five years after the license expires may become licensed by meeting the board's requirements for obtaining an initial license.

Disciplinary Actions, Penalties, and Hearings

Unless the board agrees to accept the surrender of a license, a licensed dietitian-nutritionist may not surrender the license nor may the license lapse by operation of law while the licensee is under investigation or while charges are pending against the licensee. The board may set the conditions on its agreement with the licensee under investigation or against whom charges are pending to accept the surrender of the license.

The bill modifies the grounds for taking disciplinary action in three ways. First, the use of misleading, deceiving, or untruthful advertising matter or other information no longer has to be *intentional* to be subject to board disciplinary action. Second, the failure to file a required report or record or impeding or obstructing the filing of the report or record no longer has to be *willful* to be subject to board disciplinary action. Third, an individual who fails to cooperate with a lawful investigation conducted by the board is now subject to board disciplinary action.

If, after a hearing, the board finds there are grounds to suspend or revoke a license, the board may impose a maximum \$5,000 penalty instead of suspending the license or in addition to suspending or revoking the license or reprimanding the licensee. The board must adopt regulations setting standards for imposing penalties. Any penalty imposed under these provisions must be paid into the general fund.

A board order may not be stayed pending review.

Miscellaneous Changes

Except as otherwise provided by law, no other State money may be used to support the State Board of Dietetics Practice Fund.

Each licensee must notify the board within 30 days of any change of address.

The bill repeals the provision that a dietetic rehabilitation committee may be a committee composed equally of members of the Maryland Dietetic Association and the American Nutritionists Association. The bill more generally states that the committee may be one of an association representing licensed dietitian-nutritionists.

A majority of the members then serving on the board (not the full authorized membership of the board as currently required under statute) is a quorum.

It defines a medical device as a health care product used in the diagnosis, treatment, or prevention of disease, excluding a drug, a surgical or dental instrument, physical therapy equipment, X-ray apparatus, or a component part or accessory of any of the above items.

It defines medical nutrition as the nutritional advice or counsel provided to an individual by a licensee in their professional capacity designed for an individual to alleviate a specific physiological complaint, condition, or symptom.

It defines supervision as the management of an individual who aids in the practice of dietetics by a licensed dietitian-nutritionist who may or may not be on the premises.

Current Law:

Board Powers

The board may adopt regulations and sue to enforce any provision by injunction. The board may administer oaths and issue subpoenas in connection with a hearing before the board. If a person fails to comply with a subpoena, on petition of the board, the circuit court may compel obedience to the subpoena.

Licensure Requirements

An individual must be licensed by the board before he/she may practice dietetics in Maryland. Licensure applicants must be of good moral character and at least 18. A license expires on the date set by the board and may not be renewed for a term longer than two years. Before the license expires, the licensee periodically may renew the license for an additional two years if the licensee meets specified requirements.

An applicant for licensure as a dietitian-nutritionist must complete one of four alternative sets of educational and experience requirements. An applicant must have satisfactorily completed academic requirements for the field of dietetics as approved by the board; have received a baccalaureate degree or a higher degree from a college or university approved by the board; and have satisfactorily completed a program of supervised clinical experience approved by the Commission on Dietetic Registration of the American Dietetic Association, or a comparable experience approved by the board.

Alternatively, the applicant must have received a master's or doctoral degree from a college or university accredited by a regional accrediting body recognized by the Council on Post-Secondary Accreditation in nutritional sciences (with emphasis in human nutrition), food and nutrition, dietetics, human nutrition, community nutrition, public health nutrition, or equivalent training approved by the board. The applicant also must have satisfactorily completed a board-approved experience component in dietetic or nutritionist practice. Otherwise, the applicant must *either* submit to the board proof of registration through the Commission on Dietetic Registration of the American Dietetic Association *or* have satisfactorily completed the academic and experience requirements of the Certification Board for Nutrition Specialists and submit to the board proof of certification.

An applicant must pass a board licensure examination, except under certain conditions. The board may waive the examination requirement for an individual who is licensed to practice dietetics in another state or country or who is registered to practice dietetics by

the Commission on Dietetic Registration of the American Dietetic Association. The board may grant the waiver only if the applicant pays the application fee and provides adequate evidence that the applicant meets the board's requirements and became licensed in another state or country after passing, in that state or country, an examination the board determines is comparable to the board's examination or became registered after meeting the commission's, or its predecessor's, examination requirements.

Exemptions from Licensure

The following individuals may practice dietetics without a license:

- a student or trainee, working under the direct or indirect supervision of a licensed dietitian-nutritionist while fulfilling an experience requirement or pursuing a course of study to meet licensure requirements, for a limited period determined by the board;
- a federal government employee employed to practice dietetics, while practicing within the scope of that employment;
- an individual who aids in the practice of dietetics, if the individual works under the direct or indirect supervision of a licensed dietitian-nutritionist or licensed physician;
- a registered dietitian who recently became a Maryland resident, or is a Maryland resident but is not licensed, and who has applied for licensure and has not had a license application denied in Maryland; and
- subject to board regulations, an individual who has met the academic and experience requirements to be a licensed dietitian-nutritionist, has applied for or taken the licensing examination, and is awaiting notification of the examination results.

Disciplinary Actions, Hearings, and Appeals

The board may take disciplinary action against an applicant for licensure or a licensee for numerous reasons, including: (1) intentionally using or promoting or causing the use of any misleading, deceiving, or untruthful advertising matter, or promotional literature, testimonial, guarantee, warrant, label, brand, insignia, or other representation; or (2) willfully failing to file or record any report or record as required by law in the practice of

dietetics, willfully impeding or obstructing the filing or recording of the report or record, or inducing another to fail to file or record the report or record.

Except as otherwise provided for under the Administrative Procedure Act's special provisions for licenses, before the board can take any action, it must give the individual against whom the action is contemplated an opportunity for a board hearing. The board must give notice and hold the hearing according to Administrative Procedure Act requirements.

Any person aggrieved by the board's final decision, except in disciplinary cases, may appeal the decision to the board of review and then take any further appeal allowed under the Administrative Procedure Act. Any person aggrieved by a final board decision in a disciplinary action may not appeal the decision to the Secretary of Health and Mental Hygiene or the board of review but may take a direct judicial appeal. The appeal must be made pursuant to the provisions on judicial review of final decisions under the Administrative Procedure Act.

Reinstatement of License

The board must reinstate the license of a dietitian-nutritionist who has failed to renew the license for any reason if the dietitian-nutritionist meets specified requirements.

Miscellaneous Provisions

The State Board of Dietetic Practice Fund is a continuing, nonlapsing fund comprising board fee revenue. The fund is used to cover board expenses. No other State money may be used to support the fund.

A majority of the full authorized membership of the board is a quorum.

Each licensee must produce a valid license when requested to do so by an existing or potential employer or client. Each licensee must give the board written notice of any change of address.

A dietetic rehabilitation committee evaluates and provides assistance to any dietitian-nutritionist and any other individual regulated by the board in need of substance abuse or mental health treatment. The committee may be composed equally of members of the Maryland Dietetic Association and the American Nutritionists Association, is recognized by the board, and that includes, but is not limited to, dietitian-nutritionists.

Background: The Governor's fiscal 2007 proposed budget includes \$138,742 for the board and anticipates a \$31,485 fund balance for the year.

State Revenues: Potential increase in general fund revenues depending on the number of individuals upon whom the board imposes a monetary penalty. Potential increase in board special fund revenues depending on the number of inactive licenses the board issues, for which it charges a fee, and for any license reactivation fees the board collects.

State Expenditures: Board special fund expenditures would increase by \$2,700 in fiscal 2007 to compensate board members, which accounts for the bill's October 1, 2006 effective date. The board's projected fiscal 2007 fund balance of \$31,485 is sufficient to pay for this increase. Future years reflect \$3,600 in special fund expenditures annually for board compensation. The bill would not have a fiscal impact on the Office of Administrative Hearings or the Administrative Office of the Courts.

Additional Information

Prior Introductions: None.

Cross File: None.

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

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