

Department of Legislative Services
Maryland General Assembly
2007 Session

FISCAL AND POLICY NOTE

House Bill 735 (Delegate Hubbard, *et al.*)
Health and Government Operations

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

This bill provides for licensure of massage therapists and registration 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, 2009, it transfers the existing Massage Therapy Advisory Committee (MTAC) of the State Board of Chiropractic Examiners and all its functions, powers, duties, equipment, assets, liabilities, records, and employees to the new massage board. The bill creates a nonlapsing State Board of Massage Therapy Examiners Fund to cover the board's direct and indirect costs. The board is subject to the Program Evaluation Act but has no termination date. The Legislative Auditor must audit the fund's accounts and transactions.

Provisions of the bill transferring the existing committee and establishing the new board take effect July 1, 2009. Other provisions of the bill take effect October 1, 2007.

Fiscal Summary

State Effect: The FY 2008 proposed budget includes \$770,494 for the State Board of Chiropractic Examiners, of which an estimated \$446,686 is for MTAC. No effect in FY 2008 and 2009 because regulatory authority would not be transferred to the massage therapy board until FY 2010. However, special fund expenditures and revenues could increase beginning in FY 2010 if the boards' separate staff were not sufficient to carry out the boards' separate duties and the boards needed to hire additional staff and increase fees to pay for the additional staff. The Office of Legislative Audits could audit the fund with existing resources.

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, 2009, existing certificate and registration holders may qualify for an equivalent license or registration without meeting the bill's education, experience, and examination requirements.
- On July 1, 2008, an individual who holds a certificate as a massage therapist or registration as a massage practitioner is considered licensed as a massage therapist or registered as a massage practitioner by the massage board for the remainder of the license or registration term. On expiration, the board may qualify for renewal of the massage board license or registration.
- New reinstatement provisions allow, on or after July 1, 2009, an individual holding a certificate or registration issued by the State Board of Chiropractic Examiners who has not renewed in a timely manner to qualify for reinstatement as if the individual had held a license or registration issued by the massage board.
- Before July 1, 2009, an individual 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 registration by the massage board.

The board will consist of seven members: four licensed massage therapists; one registered massage practitioner; and two consumers. Board members will serve four-year terms. The board must elect a chair from among its members and may appoint an executive director.

The board may set reasonable license and registration fees that will be deposited into the special fund. Fees must be set to approximate the cost of maintaining the board. 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. Each licensee or registered practitioner must notify the board in writing of any change in the name or address of the licensee or certificate holder within 60 days after the change occurred. If a licensee or registered practitioner fails to do so, the board may impose a \$100 administrative penalty.

Unless authorized to practice under the bill, a person may not practice, attempt to practice, or offer to practice massage therapy, massage, myotherapy, or any procedure defined by a synonym or derivation of these terms in Maryland unless licensed or registered by the massage board. An individual who is not licensed or registered may not advertise or claim that he practices any of the above procedures. A registered massage practitioner or a business that employs registered massage practitioners may not advertise provision of health-related therapeutic massage services.

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,” or “RMP,” or any other term or title with the intent to represent that the person practices massage therapy.

A person may not buy, sell, or fraudulently obtain a license or any diploma or degree 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 the first offense, a fine of up to \$2,000 or imprisonment for up to six months; or (2) for each subsequent offense, a fine of up to \$6,000 or imprisonment for 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 bill sets conditions under which the board may take disciplinary actions against a licensee, a registration holder, or an applicant for licensure or registration, including fraudulently or deceptively obtaining or attempting to obtain a license or registration for the applicant or another and fraudulently or deceptively using a license or registration. If, after a hearing on the alleged offense, the board finds that there are grounds to take disciplinary action, the board may impose a maximum \$5,000 penalty in lieu of or in addition to suspending or revoking the license or registration, reprimanding the licensee or registered practitioner, or placing the licensee or registered practitioner on probation.

The bill requires a full evaluation of the board by July 1, 2017.

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 the individual practitioner must be registered as a massage practitioner. Otherwise, an individual must be certified as a massage therapist. 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.

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 2,251 active certified massage therapists and 432 active 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.

State Revenues: DHMH estimates special fund revenues attributable to regulation of massage therapy at \$663,000 in fiscal 2008, 2010, and 2012; and \$143,000 in fiscal 2009 and 2011. 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 and terms associated with regulation are not expected to change, the transfer of regulatory authority from one board to another would not result in any new revenues being collected than otherwise would be. 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.

Special fund revenues for the State Board of Massage Therapy Examiners and the State Board of Chiropractic Examiners could increase beginning in fiscal 2010 to the extent that the boards increase their fees to pay for any increase in special fund expenditures as a result of no longer being able to use joint revenue and staff to perform board functions.

State Expenditures: The fiscal 2008 proposed budget includes \$770,494 for the State Board of Chiropractic Examiners, of which an estimated \$446,686 is for MTAC. There is no effect on expenditures in fiscal 2008 or 2009 because regulatory authority would not be transferred to the massage therapy board until fiscal 2010.

Special fund expenditures for the State Board of Massage Therapy Examiners and the State Board of Chiropractic Examiners could increase beginning in fiscal 2010 to the extent that the boards would need to hire additional staff because the boards would no longer be able to use joint staff to perform board functions. To the extent that the boards' separate staff would not be sufficient to perform the boards' separate functions, the boards may request additional staff through the annual budget process.

The Office of Legislative Audits could audit the State Board of Massage Therapy Examiners Fund with existing resources.

Additional Information

Prior Introductions: A similar bill, HB 1062 of 2006, had a hearing in the House Health and Government Operations Committee. No further action was taken. Another similar bill, SB 610 of 2005, received an unfavorable report by the Senate Education, Health, and Environmental Affairs Committee. Its cross file, HB 1167, was withdrawn. A similar bill, SB 334 of 2004, received an unfavorable report by Education, Health, and Environmental Affairs. Its cross file, HB 421, received an unfavorable report in Health and Government Operations.

Cross File: None.

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

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