

Department of Legislative Services  
 Maryland General Assembly  
 2007 Session

FISCAL AND POLICY NOTE  
 Revised

Senate Bill 255

(Senator Conway)

Education, Health, and Environmental Affairs

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, 2007.

**Fiscal Summary**

**State Effect:** General fund revenues would decrease by \$6,200 in FY 2008 due to redistribution of fee revenue; however, this reduction could be offset by the imposition of civil penalties. While MBP special fund revenues would decrease by \$79,100 in FY 2008, special fund revenues for scholarship programs in the Office of Student Financial Assistance (OSFA) would increase by \$85,300. MBP special fund expenditures would increase by \$103,800 in FY 2008 to increase salaries for certain investigative staff. Revenue and expenditure estimates for future years generally reflect the bill's redistribution of funds among various State agencies and licensing patterns.

(in dollars)	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
GF Revenue	(\$6,200)	(\$28,900)	(\$6,200)	(\$28,900)	(\$6,200)
SF Revenue	6,200	28,900	6,200	28,900	6,200
SF Expenditure	103,800	108,400	113,300	118,400	123,700
Net Effect	(\$103,800)	(\$108,400)	(\$113,300)	(\$118,400)	(\$123,700)

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

**Local Effect:** None.

**Small Business Effect:** None.

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## **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.

### *Physician Rehabilitation Program*

The bill broadens eligibility for individuals who may receive rehabilitation services by including other health professionals regulated by the board. The bill eliminates the earmarking of the \$50 fee charged to licensees for physician rehabilitation and peer review activities. In addition, the bill abolishes the Physician Rehabilitation Committee, requires MBP to attempt to contract with a nonprofit entity for physician rehabilitation services, and allows for a physician rehabilitation program that can be run by the board if the board is unable to contract with a nonprofit entity.

### *Distribution of Physician Assistant Fees*

The bill changes the fee setaside for all fees MPB collects. Specifically, MBP must 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 Personnel Shortage Incentive Grant Program (Health Personnel Program) and the Janet L. Hoffman Loan Assistance Repayment Program (Hoffman Program), the Comptroller must distribute the fees in the following manner. In fiscal 2008, 14% of the fees must be distributed to OSFA to be distributed evenly between the two specified loan and grant programs for health profession students; and the remainder of the fees go to the MBP Fund. In fiscal 2009 and thereafter, the percentage of the fees distributed to OFSA declines to 12%. As in fiscal 2008, all of the fees distributed to OFSA must be distributed evenly between the two specified programs and the remainder of the fees must be distributed to MBP. If the Governor includes at least \$750,000 in the budget for these programs, the Comptroller must distribute all fees to the MBP Fund.

### *Disciplinary Actions in Other States*

The bill allows MBP to share certain data with the National Practitioner Data Bank so that the board may take advantage of a new service to receive more timely information on actions against physicians in other states.

### *Licensee Profiles*

The bill repeals the requirement that certain medical malpractice settlement information must be posted as part of a licensee's profile on MBP's web site. Instead, MBP must provide on its Internet site notification that a person may contact the board by telephone, electronic mail, or written request to find out whether the number of medical malpractice settlements involving a particular licensee totals three or more with a settlement amount of \$150,000 or greater within the most recent five-year period as reported to MBP. The telephone number, electronic mail address, and physical address through which a person may contact MBP must be provided on the site along with the notification. MBP must provide the requested information within two business days.

### *Board Disciplinary Actions and Procedures*

MBP is authorized to enter premises where the board suspects that medicine is being practiced by an unlicensed individual, based on a formal complaint.

The bill conforms penalties for not filing certain reports relating to allied health professionals. Specifically, MBP may impose a civil penalty of up to \$1,000 against a hospital, related institution, alternative health system, or employer for failure to file a report with the board that the provider limited, reduced, or otherwise changed, or terminated:

- a certified radiation oncology/therapy technologist, certified medical radiation technologist, or certified nuclear medicine technologist;
- a licensed respiratory care practitioner; and
- a licensed polysomnographic technologist.

The bill maintains exceptions to these 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.

### *Office-based, Medication-assisted Opioid Addiction Therapy*

The bill repeals a portion of Chapter 220 of 2003 that required the board to establish or designate a program and adopt regulations to train Maryland physicians who wish to apply for a waiver from the federal Substance Abuse and Mental Health Services Administration to practice office-based, medication-assisted opioid addiction therapy. However, it retains the requirements for the board to educate physicians regarding this type of therapy. MBP may adopt regulations regarding experience or training qualifications required to qualify a physician to practice office-based, medication-assisted opioid addiction therapy.

### *Health Boards' Self-referral Investigations*

The appropriate regulatory health occupations boards may investigate a self-referral claim. By October 1, 2007, DHMH and the Office of Attorney General must • review the process for investigation of health occupations boards self-referral cases; • recommend a revised investigative process for self-referral cases including the determination of investigative resources for those cases; and • report to the Governor and specified legislative committees on findings, recommendations, and any legislative or regulatory changes necessary to implement the recommended changes.

### *Peer Review Decisions*

MBP must enter into a written contract with an entity or individual for confidential peer review of allegations that a physician failed to meet appropriate standards for the delivery of quality medical and surgical care performed in Maryland. MBP must obtain two peer review reports for each allegation it refers for peer review. A peer reviewer must meet existing statutory qualifications and, to the extent practicable, be licensed and engaged in the practice of medicine in Maryland.

MBP may consult with the appropriate specialty health care provider societies in Maryland to obtain a list of physicians qualified to provide peer review services. MBP may use sole procurement for the purposes of peer review. The hearing of charges may not be stayed or challenged because of the selection of peer reviewers before the filing of charges.

By December 31, 2008, MBP must submit a report to the Governor and the General Assembly regarding the number of complaints reviewed by two peer reviewers that resulted in disagreement between the peer reviewers and how many of these complaints resulted in charges being brought against a licensee.

### *Specialized Administrative Hearings and Training*

The Chief Administrative Law Judge must designate a pool of administrative law judges in the Office of Administrative Hearings (OAH) to hear MBP-referred cases.

MBP must provide training at least annually to OAH on medical terminology, medical ethics, and, to the extent practicable, descriptions of basic medical and surgical procedures currently in use. The training's goal is to improve the quality and efficiency of physician disciplinary hearings.

### *Administrative/Technical Changes*

The bill also makes various administrative and technical changes, including:

- codifying MBP's existing practice by allowing the board to impose a civil penalty of up to \$100 per continuing education credit in lieu of a sanction, for a first offense, for failure of a licensee to obtain the required continuing medical education credits;
- requiring, by July 1, 2007, the Secretary of Health and Mental Hygiene to standardize job classifications for investigators at MBP by increasing the base salary grade to a Grade 16;
- repealing the requirement that the board elect a secretary-treasurer;
- requiring 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 Caseloads* by September 1, 2007;
- conforming statutory provisions regarding confidentiality of records or transactions relating to those investigations to current practice 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;
- aligning the termination date for the newly established Polysomnography Professional Standards Committee with all of the other allied health professions over which MBP has authority;

- broadening eligibility to allow for-profits and individual peer reviewers to fully participate in the peer review process; and
- clarifying current registration requirements for physicians who wish to perform acupuncture by cross referencing 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). MBP is scheduled to terminate on July 1, 2007. The sunset law requires the Department of Legislative Services (DLS) to prepare a preliminary evaluation report on each governmental activity or unit subject to review, with a recommendation as to whether further (full) evaluation is necessary.

#### *Distribution of Fees*

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 Actions and Procedures*

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.

Although Maryland law requires a report on disciplinary actions taken against certain allied health professionals, it does not authorize the board to impose any civil penalty against health care providers for failure to file that report.

The prohibition against employing uncertified radiation oncology/therapy technologists, medical radiation technologists, or nuclear medicine technologists applies only to physicians.

#### *Prohibited Self-referrals*

The appropriate regulatory board is responsible for determining if health care services were provided as a result of a prohibited referral. An entity may seek repayment from a health care practitioner for any moneys paid for a claim, bill, or other demand or request for payment for health care services that were provided as a result of a prohibited referral. Each individual and group health insurance policy issued in Maryland that provides coverage for health care services must include a provision that excludes payment for health care services provided as a result of a prohibited referral.

#### *Administration of MBP*

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 separate fee,

not to exceed \$50, against licensees to fund the rehabilitation program and peer review activities. Otherwise, fees are to be set to approximate the cost of maintaining the board.

Chapter 252 of 2003 also repealed the requirement that MBP use MedChi for 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.

#### *Polysomnography Professional Standards Committee*

Chapter 595 of 2006 required MBP to license and otherwise regulate the practice of polysomnography and established MBP’s Polysomnography Professional Standards Committee. The committee must develop and recommend to the board various provisions necessary to appropriately regulate the profession, including regulations, a code of ethics, standards of care for the practice of polysomnography, and requirements for licensure.

The practice of polysomnography means monitoring and recording physiologic data during sleep, including sleep-related respiratory disturbances under the supervision of a licensed physician, or using these data for the purposes of assisting a licensed physician in the diagnosis and treatment of sleep and wake disorders. It also includes diagnosing and treating individuals who suffer from sleep disorders under certain circumstances.

**Background:** MBP is the agency of the Department of Health and Mental Hygiene responsible for the licensing and certification 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, polysomnographers, 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 implement many of the recommendations made in the *Sunset Review: Update to the 2005 Evaluation of the State Board of Physicians* (January 2007) conducted by DLS. MBP underwent a review in 2005, but the board's termination date was not extended in 2006. DLS updated its MBP review in 2006. If no action is taken during the 2007 legislative session, MBP will terminate July 1.

**State Revenues:** In fiscal 2008, MBP special fund fee revenues would decrease by \$79,050, OFSA special fund revenues would increase by \$85,283, and general fund revenues would decrease by \$6,233 as a result of the change in distribution of MBP fee revenues as shown in **Exhibit 1**. The fiscal 2008 changes are due to elimination of the current earmarks for rehabilitation program fees and physician assistant fees, applying the same distribution to these fees as currently is in place for other board fees. Beginning in fiscal 2009, fewer special funds will be diverted to OFSA and MBP will retain more fee revenue, reflecting MBP's biennial licensure process and modification of the distribution for all fees collected by MBP. The future year reductions in general fund revenue also reflect MBP's biennial licensure process.

If the Governor does not provide \$750,000 for the Health Personnel Program and the Hoffman Program, fees will be distributed in the following manner ● in fiscal 2008, 14% of fees will be diverted to OFSA (the current distribution for all physician fees except rehabilitation program fees but not physician assistant fees); ● in fiscal 2009 and thereafter, 12% of these fees will be diverted to OFSA. To date, \$750,000 for specified programs has not been included in the budget, nor has it been included in the fiscal 2008 budget. If the Governor provides \$750,000 in the State budget for the specified programs, MBP retains all fee revenue.

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**Exhibit 1**  
**Redistribution of Fee Revenue Collected by MBP**

	<u>FY 2008</u>	<u>FY 2009</u>	<u>FY 2010</u>	<u>FY 2011</u>	<u>FY 2012</u>
MBP Revenue Retention	(\$79,050)	\$74,355	\$77,278	\$74,355	\$77,278
OFSA Revenues	\$85,283	(\$45,430)	(\$71,046)	(\$45,430)	(\$71,046)
General Fund Revenues	(\$6,233)	(\$28,925)	(\$6,233)	(\$28,925)	(\$6,233)

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*Civil Penalties:* Potential minimal increase in general fund revenues beginning in fiscal 2008 depending on the number and amount of civil penalties imposed against a hospital, related institution, alternative health system, or other employer.

**State Expenditures:**

*MBP:* MBP special fund expenditures could increase by an estimated \$103,761 in fiscal 2008, which accounts for the bill's June 1, 2007 effective date. This estimate reflects the cost of increasing 14 compliance analyst positions from grade 14 to grade 16. Future year expenditures reflect full salaries with 4.5% annual increases for the existing staff.

MBP could provide the required OAH training using existing budgeted resources.

*OAH:* The Chief Administrative Law Judge could designate a pool of administrative law judges in OAH to hear MBP cases within existing OAH resources.

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**Additional Information**

**Prior Introductions:** A similar bill, HB 121 of 2006, had a hearing in the House Health and Government Operations Committee, but no further action was taken. Another similar bill, SB 398 of 2006, was amended by the Senate. The House Health and Government Operations Committee held a hearing on SB 398 but took no further action.

**Cross File:** None, although HB 282 as amended is identical.

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

**Fiscal Note History:** First Reader - February 14, 2007  
ncs/ljm Revised - Senate Third Reader - April 3, 2007  
Revised - Enrolled Bill - May 7, 2007

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