

Department of Legislative Services
Maryland General Assembly
2008 Session

FISCAL AND POLICY NOTE

House Bill 1334 (Delegate Morhaim, *et al.*)
Health and Government Operations

Health Regulatory Boards - Additional Powers and Duties

This bill standardizes how disciplinary cases are handled by specified health regulatory boards and requires investigators to have professional background, training, or experience similar to the licensee or certificate holder being investigated. Complaints have to be based on personal knowledge and verified by an affidavit. A health regulatory board can initiate an inquiry if it reasonably believes that patient or public safety is an issue; however, the board has to first document the evidence supporting its belief and obtain the approval of the Secretary of Health and Mental Hygiene. In addition, the bill requires that, to the extent practicable, health regulatory board membership reasonably reflect the geographic, racial, ethnic, cultural, and gender diversity of the State. Finally, the bill requires that, to the extent practicable, all licensees or certificate holders be notified of health regulatory board vacancies and be given the opportunity to suggest nominees as well as to vote on the nominees that are submitted to the Governor.

Fiscal Summary

State Effect: Special fund expenditures would increase significantly in FY 2009 and future years due to the bill's requirement that all investigators have professional background, training, or experience similar to the licensee or certificate holder being investigated. In addition, special fund expenditures would further increase in FY 2009 and future years due to the postage necessary to meet the bill's notification requirements. However, the amount of the increase cannot be reliably estimated at this time.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: A “health regulatory board” includes the following State boards • Acupuncture; • Examiners for Audiologists, Hearing Aid Dispensers, and Speech-Language Pathologists; • Chiropractic Examiners; • Dental Examiners; • Nursing; • Occupational Therapy Practice; • Examiners in Optometry; • Pharmacy; • Physical Therapy Examiners; • Physicians; • Podiatric Medical Examiners; • Professional Counselors and Therapists; • Examiners of Psychologists; and • Social Work Examiners. The term also includes the Physician Assistant Advisory Committee.

The bill sets out specific procedures for handling complaints against licensees and certificate holders, the timing and conduct of hearings, and various notice and opportunity to respond requirements. The initiation of the investigation or a filing of a complaint has to occur within five years from the date an action was committed or three years from the date an injury was discovered, whichever comes first. The health regulatory board has to issue any charges within 12 months of the date of the receipt of a complaint or initiation of an inquiry by the board unless documented extenuating circumstances occur. A board has to disclose the entire investigatory file to a licensee or certificate holder within 10 days of charges being issued. The board has to dismiss a complaint, place a licensee on probation, or suspend or revoke the license of a licensee or certificate holder within two years unless documented extenuating circumstances occur.

“Administrative prosecutor” means an assistant Attorney General assigned to prepare and prosecute charges against a licensee or certificate holder before a health regulatory board or the Office of Administrative Hearings. An assistant Attorney General who serves as counsel to a board can participate in the investigation of any matter before the board. However, an assistant Attorney General who is assigned to serve as an administrative prosecutor may not • serve as counsel to any board; • participate in the investigation of any matter before the board; or • be provided with any information from any investigation by a board until the board issues charges against a licensee or certificate holder. If a board decides to charge a licensee or certificate holder, it has to refer the case to an administrative prosecutor to draft the charges. Upon referral, *ex parte* communication between the board and the administrative prosecutor regarding the case is prohibited.

An individual who conducts an investigation for a health regulatory board has to have professional background, training, or experience similar to the licensee or certificate holder. Any investigation of charges relating to a violation of the applicable standard of care has to include review by at least two neutral peer reviewers. If the two reviewers disagree in their findings, a third independent reviewer has to review the case.

A health regulatory board can enter into a written contract with a nonprofit entity or entities for independent peer review of allegations based on a failure to meet appropriate standards of care. The board has to ensure that the entity provides reviewers with professional background, training, or experience similar to that of the licensee or certificate holder under review, who must be given the opportunity to respond to any questions of a reviewer.

The bill requires that the vote of two-thirds of all health regulatory board members is required before taking disciplinary action against a licensee. In addition, the bill clarifies that a majority vote of the board's quorum is sufficient to summarily suspend a license.

Current Law: Each board is relatively autonomous and does not have to seek approval from the Secretary before initiating an investigation. The grounds on which a license can be denied, revoked, or suspended are established in statute. In addition, each board has defined in statute general procedures for hearings and review processes. While grounds on which a license can be denied, revoked, or suspended are relatively uniform from board to board, procedures for disciplinary action vary a great deal and are further defined in regulations.

State Fiscal Effect: DHMH advises that board investigators typically have backgrounds in law enforcement. Under the bill, board investigators would have to be replaced with investigators who have professional background, training, or experience similar to the licensee or certificate holder being investigated. For example, the Board of Pharmacy would have to replace its 1 investigator with a pharmacist, and the Board of Physicians would have to replace its 13 investigators with physicians, physician assistants, respiratory care practitioners, psychiatrist assistants, or other professionals regulated by that board. DHMH advises that it would be difficult to hire investigators with the required background at the salary level typically paid to investigators. For example, investigators for the Board of Physicians are currently paid from \$41,000 to \$65,600 annually, while physician salaries are typically much higher, starting at \$83,100. Moreover, several boards currently share investigators. This bill would require each board to have at least one investigator with the appropriate health care background. Therefore, special fund expenditures would increase in fiscal 2009 and future years due to hiring investigators at higher salary levels, although a reliable estimate is difficult to make at this time.

In addition, special fund expenditures would increase further in fiscal 2009 and future years due to various notice requirements, in particular the requirement that, to the extent practicable, all licensees or certificate holders be notified of health regulatory board vacancies and be given the opportunity to suggest nominees, as well as vote on the nominees that are submitted to the Governor. Boards do not currently notify licensees or

certificate holders about board vacancies. Therefore, special fund expenditures would increase due to the postage necessary for notification and balloting.

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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Analysis by: Sarah K. Harvey

Direct Inquiries to:
(410) 946-5510
(301) 970-5510