

Department of Legislative Services
 Maryland General Assembly
 2009 Session

FISCAL AND POLICY NOTE

Senate Bill 956 (Senator Conway)
 Education, Health, and Environmental Affairs

Health Occupations Boards - Revisions

This bill sets standardized guidelines for all health occupations boards regarding the disciplinary process and sanctioning; board vacancies, membership, and training; the appointment of an executive director; information that must be posted on a board’s web site; data collection; the role of the assistant Attorneys General in the disciplinary process; and the authority of the boards to create their own positions. The bill also requires the Department of Health and Mental Hygiene (DHMH) to monitor and report on board compliance with the bill’s timelines for complaint resolution by each board and to annually report on the staff positions created by each board.

Fiscal Summary

State Effect: Special fund expenditures increase by *at least* \$545,500 in FY 2010 for five new investigators and four assistant Attorneys General to assist the boards in meeting the complaint resolution timelines outlined in the bill and for contractual costs incurred by the Board of Physicians to meet the peer review requirement. Future years reflect annualization and inflation. General fund expenditures increase minimally in FY 2010 through 2012 to monitor the health occupations boards’ compliance with the complaint resolution timelines and make recommendations on uniform timeframes by October 1, 2011. No direct effect on revenues.

(in dollars)	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	-	-	-	0	0
SF Expenditure	545,500	687,200	715,700	745,500	777,000
Net Effect	(\$545,500)	(\$687,200)	(\$715,700)	(\$745,500)	(\$777,000)

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

Local Effect: None.

Small Business Effect: Potential minimal.

Analysis

Bill Summary: The Secretary has to establish goals for the boards to follow regarding the timeliness of complaint resolution, including:

- completing an investigation and determining whether to charge within 18 months after a complaint is filed with the board;
- issuing charges within 90 days after a determination to charge is made;
- scheduling a hearing between 90 days and six months after charges have been issued; and
- unless good cause is shown, making a final decision by the board within the later of 90 days after (1) the board receives an opinion from the Office of Administrative Hearings; or (2) the final day of any hearing before the board.

Boards that use peer review in standard of care investigations must provide the licensee or certificate holder under investigation the opportunity to review a preliminary report and respond to questions or concerns expressed by the peer reviewer before the final report is sent to the board.

With certain exceptions, a board may not bring charges against a licensee or certificate holder on a complaint that was made more than six years after an incident occurred or could have been discovered.

The Secretary of Health and Mental Hygiene has to monitor the health occupations boards' compliance with the guidelines for timely complaint resolution specified in the bill and make recommendations on uniform timeframes for all of the boards, a group of boards, or a specific board, to specified legislative committees by October 1, 2011.

Each board must collaborate with the Secretary and the Department of Budget and Management (DBM) to develop and adopt regulations enabling the board to create any position to the extent that the cost of the position is funded through existing special funds. By September 1 of each year, DHMH has to submit an annual position accountability report to DBM and the Department of Legislative Services (DLS) on the number of created positions and the cost and funding source for each position created in the previous fiscal year.

Current Law/Background: Health occupations boards are generally charged with licensing, certifying, and regulating health professionals in a particular medical specialty or area of medical practice defined in law.

Each of the 18 health occupations boards is relatively autonomous and has defined in statute general procedures for the investigation of complaints, as well as the hearing and review process. 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.

All of the boards operate through special funds, with the exception of the Board of Examiners of Nursing Home Administrators which is the only health occupations board that is general funded.

In May 2007, the Governor directed the DHMH Office of the Inspector General (OIG) to audit the Maryland Board of Dental Examiners with the goal of determining whether the disciplinary operations and sanctioning outcomes of the board incorporate bias and inequities. OIG completed its audit and submitted its final report in December of that year. While OIG found no evidence that the board exceeded its statutory or regulatory scope of authority in the sanctioning of licensees, it did make a number of recommendations to improve board functions regarding vacancies, disciplinary actions, and data collection.

Chapter 212 of 2008, which enacted many of OIG's recommendations, also created the Task Force on the Discipline of Health Care Professionals and Improved Patient Care to issue recommendations regarding practices and procedures supporting the fundamental goals and objectives of the disciplinary programs of the health occupations boards; potential changes to the organizational structure of the health occupations boards and the relationship of all boards to DHMH; and measures that otherwise enhance the fair, consistent, and speedy resolution of complaints concerning substandard, illegal, or unethical practices by health care professionals. The task force was also charged with studying a number of issues related to the disciplinary system and was required to report its recommendations by December 1, 2008.

The task force submitted its report on February 2, 2009, which included 24 recommendations that can be accomplished either through the existing authority of the Secretary of Health and Mental Hygiene and the boards or through statutory change. This bill includes all of the task force's statutory recommendations, some that the task force indicated can be accomplished through existing board authority, and some additional changes not included in the report.

The number of investigators and Attorneys General employed by each board varies a great deal depending on the board's size. The Board of Physicians, for example, has 13 investigators, while the Board of Pharmacy has just one. Some of the smaller boards share an investigator who spends most of his or her time out in the field investigating cases.

Within the Board of Physicians, cases involving issues of substandard care and over-utilization are referred for peer review to an outside contractor. The board advises that peer reviewers are licensed physicians, and that contracting costs for peer review are about \$350,000 annually.

State Fiscal Effect: Special fund expenditures increase by *at least* \$545,461 in fiscal 2010 for five new investigators and four assistant Attorneys General to assist the boards in meeting the complaint resolution timelines outlined in the bill. This estimate reflects the bill's October 1, 2009 effective date and includes \$75,000 in additional contracting costs incurred by the Board of Physicians to meet the bill's peer review requirement. That requirement includes an additional layer of reporting that gives the licensee under peer review the opportunity to review and respond to a preliminary report before the final report is sent to the board.

The estimate includes one additional investigator and one additional assistant Attorney General each for the Board of Nursing, Board of Physicians, and Board of Dental Examiners to meet the bill's guidelines for complaint resolution. The smaller boards, many of which currently share an investigator and assistant Attorney General with other boards, will need two additional investigators and one assistant Attorney General to share among the boards to meet the guidelines for complaint resolution. The estimate includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions	9
Salaries and Fringe Benefits	\$421,263
Operating Expenses	86,543
Start-up Costs	37,655
Total FY 2010 Expenditures	\$545,461

Future year expenditures reflect full salaries with 4.4% annual increases, 3% employee turnover, and 1% increases in ongoing operating expenses.

General fund expenditures increase minimally in fiscal 2010 through 2012 for DHMH to monitor the health occupations boards' compliance with the complaint resolution timelines and make recommendations on uniform timeframes by October 1, 2011.

DLS advises that special fund expenditures may be higher given the complaint backlog that many of the boards typically carry. For instance, the Board of Nursing currently has a backlog of 1,916 open cases, a few of which are up to five years old. While the board triages the cases to handle the most serious ones first, the board advises that, on occasion, investigations can be delayed because a witness cannot be found. However, the board advises that the average case takes less than six months to investigate once it has been processed.

DLS advises that other boards, such as the board of Dental Examiners and Board of Physicians, also carry significant backlogs. So while the complaint resolution timelines outlined in the bill (scheduling a hearing within six months after issuing charges for example) might not be as difficult for smaller boards with fewer and less complicated cases, it will likely be very difficult for some of the larger boards that handle cases that often involve complex standard-of-care issues. DLS further advises that filling and keeping qualified investigators has been a chronic problem for many of the boards, slowing down the investigation process and, thus, compounding the complaint resolution backlog.

To the extent that board's are able to create their own positions, special fund expenditures will increase, although those expenditures will come only from existing resources.

DLS advises that some of the smaller boards may need to add board members to meet the requirement to establish a disciplinary subcommittee, the members of which may not participate in any final board decision. However, expense reimbursements for additional board members can be handled with existing resources, and the additional assistant Attorneys General included in this estimate can assist the disciplinary subcommittees, which should help boards expedite their complaint resolution process. The Board of Dental Examiners already has a Disciplinary Review Committee (DRC) in place. However, the board advises that DRC committee members join the board in voting on all committee recommendations, which is prohibited under the bill.

DHMH can submit an annual position accountability report with existing resources.

Additional Comments: While special fund expenditures are likely to increase under the bill's provision authorizing the board "to create any position to the extent that the cost of the position, including any fringe benefit costs, is funded from existing funds," it is unclear whether such a provision would affect special fund revenues as well. While the term, "existing funds" implies that the board may not increase fees for the purpose of generating revenue to hire a new employee, existing funds that are used to pay that employee could decrease overall board resources, and therefore, indirectly necessitate a fee increase to generate additional revenue to cover other board expenditures.

Currently, boards must wait for DBM approval before hiring new employees, which can take months or, according to the boards, never happen at all. Under the bill, boards with adequate funds may be able to hire new employees without delay or without going through the annual budget process. However, it is unclear whether the position creation provision can be implemented given that it conflicts with the Governor's authority to set position levels in the annual budget process.

Additional Information

Prior Introductions: None.

Cross File: HB 1275 (Delegate Nathan-Pulliam) - Health and Government Operations.

Information Source(s): Office of the Attorney General, Department of Budget and Management, Department of Health and Mental Hygiene, Office of Administrative Hearings, Department of Legislative Services

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Analysis by: Sarah K. Volker

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