

Department of Legislative Services  
Maryland General Assembly  
2012 Session

FISCAL AND POLICY NOTE  
Revised

House Bill 395

(Delegate Hammen)(Chair, Health and Government  
Operations Committee)

Health and Government Operations

Education, Health, and Environmental Affairs

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State Board of Nursing - Sunset Extension and Revisions

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This bill extends the termination date of the State Board of Nursing by 10 years to July 1, 2023, and requires an evaluation of the board by July 1, 2022. The Department of Health and Mental Hygiene (DHMH), in consultation with the Department of Budget and Management (DBM), must contract with an independent entity to perform a management and personnel study of the board, the cost of which must be paid out of the Board of Nursing Fund. The independent entity that is performing the study must be overseen by (and must report to) DBM regarding the study, which must be completed by October 1, 2013. DBM must report to specified committees of the General Assembly on the results of the study by December 1, 2013.

The bill takes effect June 1, 2012.

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Fiscal Summary

**State Effect:** Special fund revenues and expenditures for the State Board of Nursing are maintained beyond FY 2013. The FY 2013 budget includes \$8.0 million for board operations. Special fund expenditures for the board increase by at least \$50,000 but likely not more than \$100,000 in FY 2013 only for contractual services to perform the required management and personnel study. To the extent the cost of the study is less than this estimate, fewer special funds expenditures will be required. The bill's other requirements can be handled with existing budgeted resources.

**Local Effect:** None.

**Small Business Effect:** Minimal.

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## Analysis

**Bill Summary:** The board's authority to grant a waiver from the criminal history records check (CHRC) requirements to registered nurse (RN), licensed practical nurse (LPN), and certified nursing assistant (CNA) applicants who have completed such a check through another state board of nursing within the previous five years is repealed. The board must expand its annual report to include specified information and submit the report to the General Assembly. The bill adds a certified medication technician (CMT) to the Nursing Assistant Advisory Committee and requires the advisory committee to meet at least monthly. The bill also includes two uncodified reporting requirements.

### **Current Law/Background:**

#### *The State Board of Nursing*

The 13-member State Board of Nursing oversees approximately two-thirds of all regulated health occupations professionals in the State, more than six times the number regulated by the second largest board, the State Board of Physicians. In fiscal 2010, the board issued about 265,000 licenses or certificates to RNs, LPNs, advanced practice nurses, CNAs, CMTs, and electrologists – representing more than 259,000 individuals.

The board is required to submit an annual report to the Governor. The board must appoint a Nursing Assistant Advisory Committee consisting of at least 14 members, including 6 CNAs, 3 RNs, an administrator, an LPN, an individual who teaches a nursing assistant course, a consumer, and a representative of DHMH. The advisory committee must evaluate training programs and make recommendations for board approval, develop and recommend regulations, evaluate candidates for certification, review investigations of complaints against CNAs or CMTs and make recommendations to the board for disciplinary action, keep a record of its proceedings, and submit an annual report to the board.

#### *Maryland Program Evaluation Act*

The State Board of Nursing is 1 of approximately 70 regulatory entities and activities currently subject to periodic evaluation under the Maryland Program Evaluation Act. The Act establishes a process better known as “sunset review” as most entities evaluated are also subject to termination, including the board, which is scheduled to terminate July 1, 2013. The sunset review process begins with a preliminary evaluation conducted by the Department of Legislative Services (DLS) on behalf of the Legislative Policy Committee (LPC). LPC decides whether to waive an entity from further (or full) evaluation. If waived, legislation to reauthorize the entity typically is enacted. Otherwise, a full evaluation usually is undertaken the following year.

DLS conducted a full sunset evaluation of the board in 2011, which found that while there is a continued need for regulation of nursing by the State, there are several areas in which the board could improve service to licensees, certificate holders, and the public. A copy of the DLS sunset report on the board can be found at <http://dls.state.md.us/Content.aspx?page=104>

Although Maryland law authorizes waiver of CHRCs for certain applicants who have had such checks in another state within the previous five years, P.L. 92-544 prohibits federal criminal records obtained by boards of nursing as part of the licensing process from being shared with health care employers or others. Thus, the report recommended repeal of the waiver authority because obtaining the criminal history records information from other states violates federal law.

Although the board is already required to submit an annual report to the Governor, because the board regulates the vast majority of health occupations professionals in the State, the DLS report recommended that distribution of the annual report be expanded to include the General Assembly and the content of the report include specific data calculated on a fiscal-year basis in order to provide a clearer picture of the workload of the board.

With respect to the Nursing Assistant Advisory Committee, the report noted that the advisory committee only meets every other month, several vacancies on the advisory committee need to be filled, and the advisory committee has not submitted an annual report to the board since 2001. Additionally, although the advisory committee has oversight of CMTs, CMTs are not represented on the advisory committee. The report recommended that at least one CMT be added to the membership of the committee, the advisory committee meet at least once per month, the board fill vacancies on the advisory committee, and the role of the advisory committee be clarified.

The board provided DLS with anecdotal evidence of a need for additional positions but could not provide specific data to justify additional staff. The lack of data and ongoing changes that will affect staffing needs, such as transition to a paperless application process and biennial licensure renewal, led DLS to a determination that further study is needed to determine appropriate distribution and levels of staff. Thus, the report recommended that the board contract with an independent entity to perform a personnel study to determine if and where additional staffing is needed.

DLS recommended that legislation be enacted to extend the termination date of the board by 10 years to July 1, 2023, and that the board report to specified legislative committees on the implementation of the nonstatutory recommendations made in its report by October 1, 2013. In particular, the board should report on how it has improved its use of data collection and tracking for the licensure, certification, and complaint resolution processes. Additional recommendations contained in the report include that the board should:

- continue to prioritize certification of medication technicians;
- monitor any staffing efficiencies related to the online licensure process and the movement to biennial licensure and reallocate staff accordingly;
- maintain annual data on the number of applicants denied licensure or certification based on positive CHRC results or self-disclosure of a criminal history;
- develop policy and procedure manuals on how the board handles positive CHRC results and the complaint resolution process;
- delay seeking legislation to require CMTs to submit to CHRCs;
- continue to assess its complaint backlog and, as necessary, hold additional hearings;
- utilize its complaint tracking capabilities to develop, run, and maintain a catalog of complaint data reports on a regular basis;
- revise its website to ensure information is accurate, consistent, up to date, and easy to access;
- conduct cross-training for employees, prepare more comprehensive documentation of board functions, and update its organizational chart and job descriptions;
- develop an automated system for tracking applications; and
- submit a report on implementation and use of sanctioning guidelines.

The bill generally implements the recommendations in the DLS sunset evaluation.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** SB 921 (Senator Conway) – Education, Health, and Environmental Affairs.

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

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 mc/ljm Revised - Enrolled Bill/Updated Budget Information - May 22, 2012

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