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FISCAL AND POLICY NOTE
Revised

Senate Bill 897

(Senator Conway)(Chair, Education, Health, and
Environmental Affairs Committee)

Education, Health, and Environmental Affairs

Health and Government Operations

**State Board of Physicians - Allied Health Advisory Committees - Sunset Extension
and Program Evaluation**

This bill extends the termination dates of the Physician Assistant Advisory Committee (PAAC); the Radiation Therapy, Radiography, Nuclear Medicine Technology Advisory, and Radiology Assistance Committee; the Respiratory Care Professional Standards Committee; the Polysomnography Professional Standards Committee; the Athletic Trainer Advisory Committee; and the Perfusion Advisory Committee under the State Board of Physicians (MBP) to July 1, 2023. The bill clarifies that the board is required to provide online profiles of specified allied health licensees and requires MBP to include on each profile a summary of charges filed against the licensee. The bill also repeals the requirement that MBP assess physician assistants a fee to fund the board's rehabilitation program.

With the exception of the bill's provisions regarding the Perfusion Advisory Committee, which take effect October 1, 2012, the bill takes effect June 1, 2012.

Fiscal Summary

State Effect: Special fund revenues and expenditures for the advisory committees are maintained beyond FY 2013. The Governor's proposed FY 2013 budget includes \$8.8 million for board operations, including allied health advisory committee expenses. Special fund expenditures for MBP increase by \$42,800 in FY 2013 and \$36,800 in FY 2014 only for contractual administrative support. Special fund revenues for MBP decline by \$70,600 in FY 2013 due to the repeal of MBP's authority to charge physician assistants a fee for MBP's rehabilitation program. Future year revenue declines reflect renewal patterns.

(in dollars)	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
SF Revenue	(\$70,600)	(\$5,800)	(\$76,400)	(\$5,800)	(\$82,200)
SF Expenditure	\$42,800	\$36,800	\$0	\$0	\$0
Net Effect	(\$113,300)	(\$42,600)	(\$76,400)	(\$5,800)	(\$82,200)

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

Local Effect: None.

Small Business Effect: Minimal.

Analysis

Bill Summary: An individual may not provide paid services to an advisory committee or to MBP for three years following the termination of the individual’s appointment to the advisory committee. Likewise, an individual who has provided paid services to MBP within the preceding three years may not be appointed to a committee.

With the exception of PAAC (which already has such a requirement), the chairs of each advisory committee must serve in an advisory capacity to MBP and present the committee’s annual report to MBP. MBP must consider all recommendations of the committees, provide written explanation of its reasons for rejecting or modifying committee recommendations, and provide the committees an annual report on disciplinary matters involving the individuals regulated by the respective advisory committee. With respect to PAAC, as most of the above provisions represent current law, the bill requires PAAC to submit an annual report to MBP and requires MBP to provide PAAC an annual report on disciplinary matters involving physician assistants.

MBP Duties Related to Licensee Profiles: Online profiles of licensees must include (1) a summary of charges filed against the licensee (including a copy of the charging document until MBP takes action on or rescinds the charges); (2) a description of any disciplinary action taken by MBP within the most recent 10-year period (including copies of any public orders); (3) a summary of any final disciplinary action taken by a licensing board in any other state or jurisdiction against an allied health licensee within the most recent 10-year period; (4) a description of a conviction or entry of a plea of guilty or *nolo contendere* by the licensee for a crime of moral turpitude; and (5) the public address of the licensee.

MBP has to include a disclaimer on each licensee’s profile stating that the charging document does not indicate a final finding of guilt by the board. MBP must post information related to charges filed within 10 days after the charges are filed or the action becomes final. MBP, on written request, must forward a written copy of a profile, and must maintain a website at which all licensee profile information is available to the public. MBP also has to provide a mechanism for the notification and prompt correction of any factual inaccuracies in a licensee’s profile.

Uncodified provisions of the bill require MBP to:

- by December 31, 2012, develop and implement a plan to improve the recruitment of allied health advisory committee members;
- by December 31, 2012, in consultation with PAAC and other stakeholders, adopt regulations for determining what constitutes an advanced duty and how many successful procedures a physician assistant must perform to be deemed able to safely perform a medical act;
- license individuals who were enrolled in an unaccredited radiation therapy, radiography, or nuclear medicine technology program on October 1, 2010, and who graduate by June 30, 2014, provided that the individuals meet all other requirements for licensure; and
- by June 1, 2013, submit a report to the Department of Legislative Services (DLS) on the status of the implementation of various recommendations regarding the allied health advisory committees made in the DLS November 2011 sunset evaluation of MBP and its advisory committees.

Current Law/Background: Several allied health professions fall under the jurisdiction of MBP. In fiscal 2011, the board regulated a total of 2,594 physician assistants, 5,390 radiographers, 334 radiation therapists, 684 nuclear medicine technologists, 2 radiologist assistants, 200 respiratory care practitioners, and 68 polysomnographic technologists. Regulation of athletic trainers began in fiscal 2012, while regulation of perfusionists will begin in fiscal 2013. **Exhibit 1** contains the membership composition and duties of the six allied health advisory committees that assist MBP in its oversight role.

Licensee Profiles: MBP is required to provide online licensee profiles for physicians. While statute does not require MBP to provide online license profiles on allied health licensees, such profiles are provided by the board. The content of profiles, however, is not uniform between allied health professionals and physicians. Specifically, while profiles for allied health professionals usually contain a link to the consent or final order, there is no summary of the action taken as there is on physician profiles. In addition, allied health profiles do not include a summary of final disciplinary action taken by a licensing board in any other state or jurisdiction within the most recent 10-year period, as physician profiles do.

Exhibit 1

Allied Health Advisory Committees under the State Board of Physicians

<u>Committee</u>	<u>Membership Composition</u>	<u>Duties</u>
Physician Assistant Advisory Committee	<ul style="list-style-type: none"> • 3 physicians, including 1 who is a board member; • 3 physician assistants; and • 1 consumer member. 	Make recommendations to the board concerning physician assistant licenses and delegation agreements, as well as regulations governing physician assistants.
Radiation Therapy, Radiography, Nuclear Medicine Technology Advisory, and Radiology Assistance Committee	<ul style="list-style-type: none"> • 4 physicians; • 1 radiation therapist; • 1 radiographer; • 1 radiologist assistant; • 1 nuclear medicine technologist; • 1 consumer; and • 1 board member. 	Make recommendations to the board concerning a code of ethics, standards of care, and requirements for licensure for the practice of radiation therapy, radiography, nuclear medicine technology, and radiology assistance; on request, review applications for licensure and make recommendations to the board.
Respiratory Care Professional Standards Committee	<ul style="list-style-type: none"> • 3 physicians; • 3 respiratory care practitioners; and • 1 consumer member. 	Make recommendations to the board concerning applications for a license to practice respiratory care, as well as regulations governing the practice of respiratory care.
Polysomnography Professional Standards Committee	<ul style="list-style-type: none"> • 3 physicians; • 3 polysomnographic technologists; and • 1 consumer member. 	Make recommendations to the board concerning applications for licensure as a polysomnographic technologist, as well as regulations governing the practice of polysomnography.
Athletic Trainer Advisory Committee	<ul style="list-style-type: none"> • 3 athletic trainers; • 3 physicians; • 1 chiropractor; • 1 physical therapist; • 1 occupational therapist; and • 2 consumer members. 	Advise the board on regulations to govern the practice of athletic training and develop and recommend an evaluation and treatment protocol for use by an athletic trainer and a supervising physician.
Perfusion Advisory Committee	<ul style="list-style-type: none"> • 3 perfusionists; • 3 physicians; and • 1 consumer member. 	Advise the board on standards of care for the practice of perfusion, as well as regulations that govern the practice of perfusion.

Source: Department of Legislative Services

Public Disclosure of Filing of Charges: After filing charges against a physician licensee or notice of initial denial of a physician license application, MBP must disclose the filing to the public. There is no parallel requirement regarding the public disclosure of the filing of charges against an allied health licensee or the denial of an allied health license.

Maryland Physician Rehabilitation Program: MBP must assess each applicant for a license or renewal of a license to practice as a physician assistant a fee set by the board sufficient to fund the activities of the board's rehabilitation program. Although the program is available for physicians, physician assistants, and other allied health professionals, only physician assistants are specifically required to pay a fee to fund the program. Chapter 539 of 2007 repealed the requirement that physicians be assessed a separate fee to fund the physician rehabilitation program and peer review activities.

Allied Health Advisory Committees: The allied health advisory committees are established by statute to develop and recommend to MBP regulations and to provide the board with recommendations concerning the practice of their respective professions. According to the DLS 2011 sunset evaluation of MBP and its advisory committees, there is a perception among certain allied health professionals that the board disregards preferences of committee members or has an incomplete understanding of professional practices, particularly in establishing requirements for licensure, defining scope of practice, or developing protocols. Furthermore, as of October 2011, four allied health advisory committees had one or more vacancies in membership, and five committees had at least one member serving beyond the expiration of their term. Many of these vacancies are for physician and consumer members – member categories that regularly have been difficult to fill.

Physician Assistants and Advanced Duties: Physician assistants are prohibited from performing, attempting to perform, or offering to perform any delegated medical act beyond the scope of the license and which is consistent with a delegation agreement filed with the board. A supervising physician and physician assistant must obtain MBP approval of a delegation agreement that includes "advanced duties." However, statute and regulations do not define what constitutes an advanced duty, how MBP determines whether a procedure qualifies as an advanced duty, and how many procedures must be performed for a physician assistant to be qualified to perform a delegated duty.

Grandfathering Provision for Radiation Therapists, Radiographers, and Nuclear Medicine Technologists: In December 2010, MBP adopted regulations that require an individual to successfully complete and graduate from an accredited program before being licensed to practice radiation therapy, radiography, or nuclear medicine. The regulations, under certain circumstances, grandfather individuals who were enrolled in an unaccredited program on April 1, 2010, and who graduated on or before June 30, 2011. However, individuals who enrolled in an unaccredited program in the fall of 2010 would not be able to be licensed even though the regulations, at the time they enrolled, would have allowed them to be licensed.

Maryland Program Evaluation Act: MBP is 1 of approximately 70 regulatory entities and activities currently subject to periodic evaluation under the Maryland Program Evaluation Act. Its six advisory committees are likewise subject to evaluation. 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 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 MBP and its advisory committees in 2011. During the evaluation, DLS observed several positive trends. The board and its allied health advisory committees have dedicated members. MBP continues to process licenses proficiently and has sufficient funds to support its activities. However, significant challenges face the board and its advisory committees. As new allied health professions are added to its jurisdiction, questions regarding the relationship between the board and the advisory committees and the role of the advisory committees need to be addressed.

In total, the DLS report included 46 recommendations relating to licensing, complaint resolution, board resources, and other issues. A copy of the DLS sunset report can be found at <http://dls.state.md.us/Content.aspx?page=104>. Among other things, with respect to the allied health advisory committees, DLS recommended that statute be amended or uncodified language be adopted to:

- clarify that MBP is required to provide online profiles on allied health licensees and require that such profiles, to the extent possible, contain the same information that is provided on physician profiles;
- repeal the requirement that MBP assess physician assistants a fee to fund the rehabilitation program for physicians and certain allied health professionals;
- for each advisory committee, require that (1) the advisory committee submit an annual report to MBP; (2) the chair serve in an advisory capacity to MBP; (3) MBP consider all recommendations of the advisory committee and provide a written explanation of its reasons for rejecting or modifying the committee’s recommendation; (4) the chair report to MBP on a biannual basis and present to MBP the committee’s annual report; and (5) MBP provide to the advisory committee chair on a biannual basis a report on disciplinary matters involving allied health professionals;

- require MBP to recommend measures to increase the involvement of allied health advisory committees in complaint resolution and licensee discipline;
- require MBP to develop and implement a plan by December 31, 2012, to improve the recruitment of allied health advisory committee members;
- require MBP to disclose the filing of charges against an allied health licensee and notice of initial denial of an allied health license application to the public, with a disclaimer stating that the charging document does not indicate a final finding of guilt by MBP;
- prohibit the appointment of an individual to an advisory committee or MBP if the individual is providing or has provided services to MBP for remuneration;
- require MBP, with considerable input from PAAC, physician assistants, and supervising physicians from a variety of practice settings, to adopt regulations on or before December 31, 2012, for determining what constitutes an advanced duty and how many successful procedures a physician assistant must perform to be deemed able to safely perform a delegated medical act; and
- require MBP to license individuals who were enrolled in an unaccredited radiation therapy, radiography, or nuclear medicine technology program on October 1, 2010, and who graduate by June 30, 2014, provided that the individuals meet all other requirements for licensure.

The bill implements most of the recommendations contained in the DLS sunset evaluation with respect to the allied health advisory committees.

State Fiscal Effect: Special fund revenues for MBP decline by an estimated \$70,550 in fiscal 2013 from a reduction in fee revenues paid by physician assistants for the Maryland Professional Rehabilitation Program (MPRP). This estimate is based on the following information and assumptions:

- 2,358 physician assistants renewed their licenses with MBP in fiscal 2011;
- these physician assistants will renew their licenses every two years in odd-numbered fiscal years;
- an average of 232 new physician assistant licenses are issued by MBP annually;
- MBP currently charges physician assistants a fee of \$25 for MPRP; and
- although the effective date of the bill is June 1, 2012, no revenue lost is accounted for in fiscal 2012.

Future years reflect growth in the number of licensees and renewal patterns.

MBP increased the initial licensure fee for new physician assistants from \$200 to \$225 in August 2011. On average, total MBP fee revenues are \$9.2 million annually. MBP is projected to have a \$4.1 million fund balance at the end of fiscal 2012, which represents roughly 47% of MBP annual expenditures.

Special fund expenditures for MBP increase by \$42,778 in fiscal 2013 and \$36,790 in fiscal 2014 for one full-time contractual position to assist with administrative duties under the bill, including updating online allied health licensee profiles, adopting regulations, and completing reporting requirements. A contractual position is assumed as many of these duties are not ongoing. This estimate reflects a one-month start-up delay from the bill's June 1, 2012 effective date, and includes a salary, fringe benefits, one-time start-up costs, and other operating expenses.

	<u>Fiscal 2013</u>	<u>Fiscal 2014</u>
Contractual Position	1	
Salary and Fringe Benefits	\$35,443	\$33,911
One-time Start-up Expenses	4,485	0
Other Operating Expenses	<u>2,850</u>	<u>2,879</u>
Total Expenditures	\$42,778	\$36,790

Fiscal 2014 expenditures reflect inflation in operating expenses and employee turnover.

The allied health advisory committees are funded through MBP. All fee revenues from allied health licensees accrue to the State Board of Physicians' Fund. MBP does not separately account for allied health revenues or expenditures. The 2011 DLS sunset evaluation of MBP and its advisory committees estimated that allied health revenues and expenditures were approximately \$1.5 million and \$1.3 million, respectively over the fiscal 2010/2011 biennial license renewal cycle. This analysis assumes that revenues and expenditures for the allied health advisory committees continue under the bill, with revenues paid to the State Board of Physicians' Fund. However, DLS notes that this would require extension of the termination date of MBP (including the special fund) beyond the current date of July 1, 2013.

Additional Information

Prior Introductions: None.

Cross File: None.

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

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