

Department of Legislative Services
Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE
Revised

House Bill 1456 (Chair, Health and Government Operations
Committee)(By Request - Departmental - Health and
Mental Hygiene)

Health and Government Operations

Finance

Department of Health and Mental Hygiene - Board of Review - Jurisdiction

This departmental bill limits the jurisdiction of the Board of Review of the Department of Health and Mental Hygiene (DHMH) to appeals from decisions of the Secretary of Health and Mental Hygiene in contested cases regarding an individual's eligibility for or participation in Medicaid. Medicaid eligibility decisions made under delegation by the Secretary to the Maryland Health Benefit Exchange (MHBE) are not subject to review by the board. A party aggrieved by a decision of the Secretary need not exhaust the administrative remedy before the board and may petition for judicial review of the Secretary's decision as a final agency decision under the Administrative Procedure Act (APA).

By November 1, 2015, DHMH must study the continued role of the Board of Review and report its findings and recommendations to the Governor and the General Assembly on whether the appellate jurisdiction of the board should be further limited.

The bill takes effect on and applies to decisions of the Secretary issued on or after June 1, 2014.

Fiscal Summary

State Effect: Negligible reduction in DHMH general fund expenditures beginning in FY 2016 due to a reduction in the caseload of the Board of Review. Savings are not assumed prior to that year due to the current backlog of cases. Preparation of the required report can be handled with existing budgeted resources. Revenues are not affected.

Local Effect: Any fiscal or operational impact on the circuit courts is anticipated to be minimal.

Small Business Effect: DHMH has determined that this bill has minimal or no impact on small business (attached). The Department of Legislative Services concurs with this assessment. (The attached assessment does not reflect amendments to the bill.)

Analysis

Bill Summary: Any appeal must be filed with the board within 30 days after the date of the decision from which the appeal is being taken. If the board does not issue a decision within 180 days after submission of the notice of appeal, the decision of the Secretary must be considered affirmed. Any party may seek an appeal from a decision of the board. Appeals from a decision of the board must be governed by APA.

The bill repeals the authority of a person aggrieved by a final decision of DHMH in a contested case (including decisions made by individual health occupations boards) to appeal that decision to the Board of Review and instead specifies that a person may petition for judicial review. This change is made for decisions regarding private psychiatric facilities and private group homes, hospitals and nursing homes, health maintenance organizations, and 18 health occupations boards.

Current Law: The Board of Review is a seven-member board appointed by the Governor with the advice and consent of the Senate. Members are appointed for three-year terms and are entitled to compensation in accordance with the State budget and reimbursement for expenses under standard State travel regulations. The board must make recommendations to the Secretary on the operation and administration of DHMH. Except as expressly provided otherwise, the board must hear and determine any appeal from (1) a decision of the Secretary or any unit in DHMH for a contested case that is subject to judicial review under APA; (2) a decision of the Secretary or any unit of DHMH that is subject to judicial review under any provision of law other than APA; and (3) an action or inaction by a unit of DHMH for which the Secretary, by rule or regulation, provides for review by the board. The board was established in 1969, predating the 1990 creation of the Office of Administrative Hearings (OAH), which modernized administrative appeals practice in Maryland.

There is no comparable administrative appeals process applicable to other State agencies. Two other boards of review associated with other agencies were recently repealed. Chapter 171 of 2013 repealed the Board of Review of the Maryland Department of Agriculture, while Chapter 327 of 2008 abolished the Board of Review of the Maryland Department of Transportation. The Department of Human Resources (DHR), which has a similar workload of contested cases to that of DHMH, does not have a board of review.

Instead, appeals are rendered by OAH and DHR's final decisions in those cases are subject to immediate judicial review.

The federal Patient Protection and Affordable Care Act (ACA) expanded eligibility criteria for Medicaid, including simplified income eligibility rules based on an applicant's modified adjusted gross income (MAGI). To ensure that eligibility decisions are consistent and final, federal regulations (42 CFR 431.10(c)(3)(iii)) require a state exchange to serve as the final administrative decisionmaker regarding certain eligibility determinations.

Background: According to DHMH, there is currently a cumbersome two- or three-tier administrative review process in most DHMH contested cases. The Secretary has delegated all contested case hearings to OAH, which renders proposed decisions in some cases and final decisions in others. For most DHMH decisions, the Board of Review is an additional administrative remedy that must be exhausted before an aggrieved person can file an action in circuit court.

In cases where the Secretary has delegated final decisionmaking authority to OAH, there are *two* layers of administrative review – one before OAH and one before the board. In such cases where parties take exceptions to the Secretary before DHMH's decision is itself final, there are *three* rounds of administrative review. Precluding a direct judicial appeal to the circuit court until the resolution of two (and in some cases three) administrative appeals can result in an unnecessarily protracted administrative appeals process. In one recent case pending before the Court of Special Appeals, it took six years from DHMH's initial decision for the appellant to reach circuit court.

The majority of cases currently reviewed by the board involve eligibility for and participation in Medicaid. Under the bill, the board would retain jurisdiction over these cases, with the exception of cases the Secretary has delegated to MHBE. The Secretary has delegated eligibility determinations for the MAGI-based coverage groups to MHBE as part of a coordinated eligibility and appeals process. As a result, these decisions are decisions of MHBE and subject to MHBE's appeals process, which involves review by an administrative law judge at OAH. This provision is intended to ensure conformity with the new processes and finality requirements established under ACA for resolving appeals from Medicaid eligibility determinations.

State Fiscal Effect: The bill reduces the board's caseload and results in an across-the-board reduction in general fund administrative costs for the board (*i.e.*, reduced printing and postage as well as a reduction in the number of required board meetings and associated per diem and reimbursement expenses). The extent of such a reduction cannot be reliably estimated at this time and depends on the number of litigants that forgo board review and seek direct judicial review. Any actual reduction in general

fund expenditures is anticipated to be negligible. Due to a current backlog of cases, no such savings are anticipated until fiscal 2016.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Health and Mental Hygiene, Maryland Insurance Administration, Judiciary (Administrative Office of the Courts), Office of Administrative Hearings, Department of Legislative Services

Fiscal Note History: First Reader - March 11, 2014
ncs/ljm Revised - Enrolled Bill - May 7, 2014

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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Department of Health and Mental Hygiene – Board of Review –
Jurisdiction

BILL NUMBER: HB 1456

PREPARED BY: Department of Health and Mental Hygiene

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND SMALL
BUSINESS

OR

WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND SMALL
BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS

This legislative proposal impacts Board and DHMH operations, as well as individuals and businesses who appeal from certain DHMH decisions. However, the proposal will not have a meaningful economic impact on small businesses.