

Department of Legislative Services
Maryland General Assembly
2016 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 393

(Senator Nathan-Pulliam, *et al.*)

Education, Health, and Environmental Affairs

Health and Government Operations

Maryland Nurse Practice Act - Peer Review and Advisory Committees and Penalties

This bill reinstates the misdemeanor penalty for specified violations of the Maryland Nurse Practice Act (MNPA), eliminates the misdemeanor penalty for other violations, and increases the maximum penalty for specified violations. The bill repeals the requirement that the State Board of Nursing (BON) appoint specified peer review committees and instead authorizes the board to appoint peer advisory committees to provide expert advice related to the practice of nursing by advance practice nurses.

Fiscal Summary

State Effect: General fund revenues increase due to higher maximum penalties authorized for specified violations of MNPA and the expansion of the misdemeanor penalty to specified persons practicing without a license or certificate. Special fund expenditures increase minimally for BON to provide travel reimbursements and per diem payments to members of peer advisory committees authorized under the bill.

Local Effect: The bill is not anticipated to affect the operations or finances of local governments.

Small Business Effect: Minimal.

Analysis

Bill Summary:

Peer Advisory and Review Committees

A member of a peer advisory committee is entitled to receive compensation, as determined by BON, and reimbursement for expenses under standard State travel regulations, as provided in the State budget.

The bill repeals the requirement that BON appoint separate peer review committees to oversee the use of health insurance and medical assistance benefits by certified nurse anesthetists (CRNAs), certified nurse midwives (CNMs), certified nurse practitioners (CRNPs), and any other license with a nursing specialty that has been approved for third-party reimbursement conditioned on peer review.

Violations that Constitute a Misdemeanor

The bill reinstates the misdemeanor penalty for violating prohibitions against practicing as a registered nurse, electrologist, certified nursing assistant, certified medication technician, certified medicine aide, or direct-entry midwife without a license (or certificate). The bill otherwise limits the acts that constitute a misdemeanor to misrepresentation, selling fraudulent records, and practicing under fraudulent records (eliminating practicing beyond the scope of a license and employing an unlicensed person from the list of acts that constitute a misdemeanor). The maximum penalties for these misdemeanor offenses are increased as well; the maximum fine doubles from \$5,000 to \$10,000, and the maximum term of imprisonment increases from one to five years.

Maximum Civil Fine

Finally, the bill increases, from \$5,000 to \$20,000, the maximum civil fine the board may impose for (1) practicing without a license (or certificate); (2) practicing beyond the scope of the license issued; (3) misrepresentation; (4) sale or fraudulent obtainment of any record, nursing diploma, license, license renewal, certificate, or certificate renewal; (5) practicing under a fraudulent diploma, license, or record; or (6) employing an unlicensed person.

Current Law:

Peer Review Committees

BON is required to appoint separate peer review committees to oversee the use of health insurance and medical assistance benefits by CRNAs, CNMs, and CRNPs, as well as any

other licensee with a nursing specialty that has been approved for third-party reimbursement conditioned on peer review.

Cease and Desist and Civil Fine Authority

Subject to hearing provisions, and in addition to other authorized sanctions, BON may issue a cease and desist order, impose a civil fine of up to \$5,000 per offense, or both for certain violations of MNPA. These violations are (1) practicing without a license (or certificate); (2) practicing beyond the scope of the license issued; (3) misrepresentation; (4) sale or fraudulent obtainment of any record, nursing diploma, license, license renewal, certificate, or certificate renewal; (5) practicing under a fraudulent diploma, license, or record; or (6) employing an unlicensed person. Each violation is a separate offense if it occurs at a different time, date, or location or on the same date and location at a different time. All fines accrue to the general fund.

An action may be maintained in the name of the State or BON to enjoin specified prohibited conduct or conduct that is grounds for disciplinary action. An action may be brought by BON (in its own name), the Attorney General (in the name of the State), or a State's Attorney (in the name of the State). An action must be brought in the county where the defendant resides or engaged in the acts sought to be enjoined.

Violations that Constitute a Misdemeanor

Except for violations of the prohibitions against practicing as a registered nurse, electrologist, certified nursing assistant, certified medication technician, or certified medicine aide, a person who violates any provision of Subtitle 7 of MNPA is guilty of a misdemeanor. (Limited exceptions apply for performance beyond skills and delegation of tasks.) The misdemeanor penalty is a fine of up to \$5,000, imprisonment for up to one year, or both. Subject to hearing and appeals requirements, BON may also vote to reprimand a licensee or certificate holder, place the individual on probation, or suspend or revoke a license or certificate.

Background: As of February 11, 2016, BON regulated 262,540 active licensees or certificate holders, including 502 CRNAs, 280 CNMs, and 5,112 CRNPs.

BON advises that it investigates any allegation of misconduct and that the Office of the Attorney General prosecutes specified cases under the authority provided in the Health Occupations Article. However, the ability to prosecute individuals for a violation of the general prohibition against practicing as a registered nurse, electrologist, certified nursing assistant, certified medication technician, and certified medicine aide under the misdemeanor statute was inadvertently removed by Chapter 486 of 2012. BON advises

that this bill is intended to reinstate the authority necessary to charge an individual with a misdemeanor for practicing without a license.

State Fiscal Effect: General fund revenues may increase beginning in fiscal 2017 from increasing the maximum fine for a misdemeanor violation from \$5,000 to \$10,000 and the maximum civil fine for other violations of MNPA from \$5,000 to \$20,000. Any actual revenue increase depends on the number and types of violations and cannot be reliably estimated.

The increased maximum prison term and expansion of its applicability to persons practicing without a license or certificate do not have a material impact on State finances or operations.

BON advises that it has already established an advisory committee for CRNAs, which meets quarterly. BON advises that expenses include a per diem payment of \$100 per committee member and reimbursement for travel expenses. BON advises that it anticipates establishing four additional advisory committees to cover advance practice nurses, CNMs, clinical nurse specialists, and CRNPs, with four members on each committee. While the total cost for new advisory committees cannot be reliably estimated at this time, if each advisory committee meets quarterly, total costs reach approximately \$1,600 per advisory committee (a total of \$6,400), plus reimbursement for travel expenses.

Additional Information

Prior Introductions: None.

Cross File: HB 490 (Delegate Cullison) - Health and Government Operations.

Information Source(s): Judiciary (Administrative Office of the Courts), Department of Health and Mental Hygiene, Department of Public Safety and Correctional Services, Office of Administrative Hearings, Department of Legislative Services

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