

Department of Legislative Services
Maryland General Assembly
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FISCAL AND POLICY NOTE
First Reader

House Bill 885 (Delegate Vogt, *et al.*)
Health and Government Operations

Behavioral Health Administration - Creation and Maintenance of Mental Health
Professional Profiles (Patient Protection Provider Information Act)

This bill requires the Department of Health and Mental Hygiene’s Behavioral Health Administration (BHA) to create and maintain a public individual profile on each “mental health professional.” Each profile must contain specified information. BHA must provide a mechanism for the notification and prompt correction of any factual inaccuracies in the profiles. The State Board of Physicians (MBP) and the State Board of Professional Counselors and Therapists (MBPCT) must promptly provide BHA with any required information for the creation and maintenance of the profiles.

Fiscal Summary

State Effect: General fund expenditures for BHA increase beginning in FY 2017, to the extent BHA is able to implement the bill’s requirements for professional counselors and therapists, as discussed below. Special fund expenditures also likely increase for MBPCT to promptly provide the required information. Revenues are not affected.

Local Effect: None.

Small Business Effect: Potential meaningful. The bill requires specified information regarding professional counselors and therapists, including additional disciplinary information, to be publicly available.

Analysis

Bill Summary/Current Law: Under the bill, “mental health professional” means a physician licensed by MBP or a counselor or therapist certified or licensed by MBPCT who provides mental health services to individuals in the State.

Under existing law, MBP is required to maintain a public individual profile for each licensed physician. The bill requires BHA’s physician profiles to include the same information as is currently required for MBP’s profiles. Additionally, the bill requires BHA’s profiles for professional counselors and therapists to include much of the same information.

The following information is required for physicians’ profiles under existing law (§ 14-411.1 of the Health Occupations Article) *and* is required for professional counselors and therapists’ profiles under the bill:

- a summary of charges filed against the licensee, including copies of the charging documents, until disciplinary action is taken or the charges are rescinded;
- a description of any disciplinary action taken by the board within the most recent 10-year period, including a copy of the public order;
- a description in summary form of any final disciplinary action taken by a licensing board in any other state or jurisdiction against the licensee within the most recent 10-year period;
- educational and practice information about the licensee, including the name of the postsecondary school and date of graduation, training descriptions, primary practice setting location, and whether the licensee participates in the Maryland Medical Assistance Program.

Currently, physicians’ public profiles also include the number of medical malpractice final court judgments and arbitration awards against the physician within the most recent 10-year period for which all appeals have been exhausted; convictions or pleas of guilty or *nolo contendere* by the physician for a crime involving moral turpitude; and a disclaimer that charging documents do not indicate a final finding of guilt. Charges and final disciplinary action must also be included in a physician’s profile within 10 days of charges being filed or the disciplinary action becoming final. None of this information is required for BHA’s profiles of professional counselors and therapists.

Background: According to MBP, there are 29,787 physicians in the State. Public profiles for physicians are searchable by name and/or license number on MBP’s website. MBP’s public profile system was enhanced in fiscal 2015 to allow physicians to make their own changes in the system for the following information: hospital privileges, postgraduate

training, other state licenses, personal profile information, confidential practice and public addresses, areas of concentration, specialties, and postgraduate training programs. Changes appear on the website within 24 hours of submission.

MBPCT advises that there are approximately 6,300 professional counselors and therapists. MBPCT posts disciplinary action and public orders against licensees on its website; information is available for actions taken in 2001 and subsequent years. However, MBPCT does not currently maintain a public profile for each licensee.

State Fiscal Effect: BHA advises that it is unable to estimate the impact of the bill due to concerns about implementation. BHA advises that the bill does not define “mental health services;” therefore, BHA is unsure which physicians, counselors, and therapists must have profiles under the bill. BHA further advises that it is unclear whether BHA, MBP, and/or MBPCT must make these determinations. However, if MBP identifies the appropriate physicians that must be included, then BHA can handle the bill’s requirements relating to *physicians* with existing resources (since MBP already maintains the bill’s required information on its own website).

However, BHA advises that it likely cannot implement the bill’s requirements relating to professional counselors and therapists, since MBPCT is not currently authorized to provide information other than what is already provided on MBPCT’s website (*e.g.*, license verification and final disciplinary action). MBPCT similarly advises that it does not currently maintain much of the bill’s required information, including whether a licensee participates in the Medical Assistance Program and practice locations for each licensee. The bill’s required education and training descriptions are also not readily available in MBPCT’s licensing system for each licensee. Furthermore, MBPCT expressed concern regarding the bill’s requirement to include charging documents in public profiles, as these documents must be kept confidential pending final disciplinary action; obtaining disciplinary records from other states and jurisdictions may also be difficult due to confidentiality laws, which vary amongst jurisdictions.

Thus, while BHA can handle the bill’s requirement for *physician* public profiles with existing resources, general fund expenditures likely increase in fiscal 2017 for BHA to create and maintain public profiles for professional counselors and therapists. Special fund expenditures likely also increase for MBPCT to meet the bill’s requirement to promptly provide to BHA any information required for the creation and maintenance of mental health professional profiles. A public profile database for professional counselors and therapists does not currently exist, and much of the bill’s required information is not readily available from MBPCT. Due to the uncertainty regarding the bill’s scope and the availability of the required information, BHA advises that the bill’s effect is too speculative and that a reliable estimate cannot be determined at this time.

Small Business Effect: While final disciplinary action against professional counselors and therapists is already publicly available through MBPCT's website, the bill requires additional information to be made public, including charges that have yet to be adjudicated. These charges would remain public on the profile until MBPCT takes disciplinary action or rescinds the charges.

Additional Comments: The bill applies to physicians, counselors, and therapists who provide mental health services to individuals in the State. However, other licensed health occupations provide mental health services but are not included in the definition of "mental health professional," including psychologists and social workers.

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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