

Department of Legislative Services
 Maryland General Assembly
 2017 Session

FISCAL AND POLICY NOTE
 Enrolled - Revised

Senate Bill 385 (Senator Nathan-Pulliam, *et al.*)
 Education, Health, and Environmental Affairs Health and Government Operations

Maryland Nurse Practice Act - Revisions

This bill makes multiple changes to statute governing the State Board of Nursing (BON). The bill (1) alters definitions; (2) adjusts the size and composition of the board; (3) alters provisions related to the powers, duties, and activities of the board; (4) alters the name and function of the rehabilitation program; (5) makes clarifying changes to the licensing of advance practice registered nurses; (6) clarifies procedures related to the use of criminal history record information (CHRI); (7) expands the scope of the unauthorized practice statute; and (8) makes other technical, stylistic, clarifying, and conforming changes.

Fiscal Summary

State Effect: Special fund expenditures increase by up to \$16,300 in FY 2018 for BON to provide per diem payments and mileage reimbursement to one additional board member as well as the members of the Certified Nursing Assistant and Medication Technician Advisory Committee as authorized under the bill. Future years reflect annualization. Revenues are not affected.

(in dollars)	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022
Revenues	\$0	\$0	\$0	\$0	\$0
SF Expenditure	16,300	21,800	21,800	21,800	21,800
Net Effect	(\$16,300)	(\$21,800)	(\$21,800)	(\$21,800)	(\$21,800)

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

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary/Current Law: Much of the bill makes technical, stylistic, and clarifying changes. These changes include (1) changing “person” to “individual” throughout Title 8 of the Health Occupations Article; (2) adding “advanced practice registered nurse” in provisions intended to apply to all nurses; (3) replacing lists of specified license and certificate holder classifications with references to “licensees and certificate holders” generally; and (4) replacing references to “chemical dependence” with references to “substance use disorders.” Other significant changes are highlighted below.

Definitions

The bill modifies the term “advanced practice nurse” to be “advanced practice *registered* nurse” and clarifies that the term applies to an individual who has a multistate license to practice under the Nurse Licensure Compact (NLC), in addition to an individual licensed by BON. The bill also removes the subspecialty “nurse psychotherapist” from the list of specified practice areas.

The definition of “licensee” is expanded to include an individual who has a multistate licensure privilege to practice registered nursing or licensed practical nursing under NLC. The bill clarifies that a “mentor” means a certified *registered* nurse practitioner or licensed physician who meets specified qualifications.

The bill defines “practice advanced practice registered nursing” to mean to practice registered nursing within the scope of practice in an area of specialty for which the individual holds a certification from a nationally recognized certifying body that is recognized by BON.

Composition of the Board of Nursing

The bill increases the total number of board members from 13 to 14 and alters the composition of the board to increase from 8 to 9 the number of registered nurses on the board. The bill specifies that the new board member must be a licensed nurse who is either a licensed practical nurse, a registered nurse, or an advanced practice registered nurse, and it decreases the number of licensed practical nurses on the board from 3 to 2. The number of consumer members remains at 2. The bill also simplifies the list of registered nurses that must be represented on the board, specifying that 2 are required to be advanced practice registered nurses.

The bill codifies current practice by specifying that a petition for appointment to the board submitted to the Secretary of Health and Mental Hygiene and the Governor is required to include 25 signatures of support from nurses who hold the same type of license that the

individual seeking appointment to the board holds. It also specifies classifications of nurses who will receive notification of vacancies on the board.

Activities, Powers, and Duties of the Board

Election of Officers: The bill changes, from July to June, the month of the year that the board elects a president and a secretary every two years. The bill also clarifies that the president of the board must be a registered nurse and that the president serves a two-year term unless the term of the member serving as president expires, or the president resigns. The bill authorizes the board to hold a special election for president if the president resigns, and it requires that the election be held within 30 days. The newly elected president is to complete the remainder of the previous president's term. BON advises that it has never had to replace a president of the board during his or her term.

Quorum and Staff: The bill streamlines the definition of quorum to only require that a majority of the appointed members serving on the board be present, instead of requiring specific numbers of members who hold specific licenses serving on the board. The bill also codifies current practice by explicitly authorizing the board to hire a deputy director and specifies that the deputy director may assume the duties and authority of the executive director in the absence of the executive director.

Powers and Duties: The bill clarifies and codifies current practice by specifying that the board has the authority to set standards for the practice of the various license classifications under its purview. The bill also expands the list of licensees holding specified license classifications open to reasonable public inspection to include nurse anesthetists, clinical nurse specialists, medical technicians, electrologists, and direct-entry midwives.

The bill codifies current practice by explicitly authorizing the board to (1) appoint standing and *ad hoc* committees from among the board members; (2) delegate to the executive director the authority to discharge board duties; and (3) hold the executive director accountable to the board.

Examinations for Registered Nurses and Licensed Practical Nurses: The bill repeals the requirement that BON determine the subjects, scope, form, and passing score for each licensing examination. BON advises that it currently relies on a national licensing test and that it sets the *passing rate* for the test based on a percentage of the national average score.

Required Testing: The bill repeals the requirement that the board specifically test the oral communication skills of specified licensees and likewise repeals the requirement that the board, through regulation, develop a procedure for testing individuals who, because of a speech impairment, are unable to satisfy the board-approved oral competency test. BON advises that it does not currently test oral communication skills.

Certified Nursing Assistant and Medication Assistant Advisory Committee: The bill authorizes the board to pay compensation and reimbursement for expenses to members of the Certified Nursing Assistant and Medication Technician Advisory Committee.

Rehabilitation Program and Committee

The bill renames the Rehabilitation Program and the related committee to be the Safe Practice Program and committee and makes corresponding conforming changes. The bill defines “participant” to include all classes of licensees as well as applicants who are enrolled in the program. The bill also repeals the authority of the committee to review and designate treatment facilities and services where licensees may be referred. BON advises that it does not currently review or designate such facilities.

The bill clarifies the authority of the board to initiate disciplinary action based on a participant’s expulsion from the Safe Practice Program and codifies current practice by authorizing the board to summarily suspend the license or certificate of any licensee or certificate holder, in accordance with authority provided in the State Government Article.

The bill specifies that, after the committee has determined that a participant *no longer requires monitoring and may practice safely*, the committee must purge and destroy all records of the individual’s participation in the program. Further, any records concerning an individual’s participation in the program are not subject to disclosure under a Public Information Act request.

Advanced Practice Registered Nurses

The bill repeals the subsection related to application for certification as an advanced practice nurse, and it recodifies the subsection and its requirements to apply and qualify for *advanced practice certification*. The bill also recodifies prohibitions against unauthorized practice for advanced practice registered nursing in a form that mirrors that of other licenses. The bill specifies terms and abbreviations that may not be used by an unlicensed individual. The bill also specifies that an individual may not knowingly employ an individual to practice advanced practice registered nursing if that individual is not authorized to practice by the board.

The bill codifies current practice by repealing the authority for the board to issue a temporary practice letter to a certified nurse practitioner or certified nurse-midwife under specified circumstances. BON advises that it no longer issues temporary practice letters, and that the provision was originally intended to assist BON in reducing a backlog of applications.

Criminal History Record Information

The bill clarifies that, on receipt of CHRI, the board must consider specified factors when determining whether to *initiate a disciplinary action* against a licensee based on the information received, instead of when determining whether to renew a license of an individual. The bill also clarifies that the board may not renew a license without *written documentation* that the applicant has submitted to a criminal history records check as required, instead of the board not renewing a license if the CHRI has not been received.

The bill also repeals the requirement that specified applicants who apply for a temporary practice certificate not have a criminal charge or disciplinary action *pending* in the State or another jurisdiction as a condition for approval. The board advises that withholding the temporary certificate based on pending action would likely constitute a denial of due process.

Miscellaneous Provisions

The bill repeals the authority of the board to replace a specified document after the payment of a fee, as the document is available online from the BON website, for free.

The bill codifies current practice of requiring an applicant for an electrologist license to take a written examination approved by the board, and it authorizes the board or the board's designee to give clinical examinations to applicants, reexamine applicants who fail the examination, and notify applicants of the time and place of the examination. The bill also repeals an outdated requirement that electrologists display a notice explaining specified universal precautions in each office.

Background: BON advises that the majority of the bill's changes are clarifying or codify current practice. As of January 2017, BON issued 236,385 licenses or certifications, including 78,923 registered nurses, 12,393 licensed practical nurses, 32,183 medication technicians, and 61 electrologists. There are approximately 780 advanced practice registered nurses working in the State under an NLC privilege.

According to BON, the Certified Nursing Assistant and Medication Technician Advisory Committee currently has 13 filled positions and meets monthly. However, BON has never been able to attract enough volunteers to fill the committee and attributes this to it being the only board committee that does not receive a per diem or reimbursement.

State Expenditures: BON special fund expenditures increase by up to \$16,280 in fiscal 2018, which accounts for the bill's October 1, 2017 effective date. This estimate primarily reflects the cost to provide a \$100 per member per diem payment and a total of \$139 in mileage reimbursement per meeting to the 15 members of the Certified Nursing

Assistant and Medication Technician Advisory Committee. A total of 9 monthly advisory committee meetings are assumed to be reimbursed in fiscal 2018. This estimate assumes full attendance of the 15 advisory committee members at each meeting; however, BON advises that meetings have historically been attended by 7 or fewer members. Future year expenditures reflect annualization and assume 12 monthly advisory committee meetings per year.

The estimate also reflects the cost to provide per diems and mileage reimbursement for the additional board member, with 14 BON meetings assumed in fiscal 2018 (given the bill's effective date) and 19 meetings annually thereafter. The number of board meetings is based on the number scheduled for 2017.

Additional Information

Prior Introductions: None.

Cross File: HB 482 (Delegate Cullison, *et al.*) - Health and Government Operations.

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

Fiscal Note History: First Reader - February 7, 2017
mm/jc Third Reader - March 16, 2017
Revised - Amendment(s) - March 16, 2017
Revised - Clarification - March 16, 2017
Enrolled - May 5, 2017
Revised - Amendment(s) - May 5, 2017

Analysis by: Nathan W. McCurdy

Direct Inquiries to:
(410) 946-5510
(301) 970-5510