

Department of Legislative Services
 Maryland General Assembly
 2017 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 127

(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 - Repeal

This departmental bill repeals the Board of Review of the Department of Health and Mental Hygiene (DHMH) and makes conforming changes. The board may no longer accept any new cases beginning June 1, 2017. If a petition for judicial review is filed in circuit court, the Office of Administrative Hearings (OAH) may not charge a Medicaid recipient, applicant, or authorized representative a fee for the costs of transcription or the preparation or delivery of OAH records to the circuit court or to a party. A court or an officer of the court may not charge a fee to an individual petitioning for judicial review to a circuit court from an OAH decision in a Medicaid fair hearing contested case.

The bill takes effect June 1, 2017, but provisions repealing the board and prohibiting the charging of specified fees take effect January 1, 2018.

Fiscal Summary

State Effect: No effect in FY 2017, as discussed below. General fund expenditures for DHMH decrease by as much as \$7,900 in FY 2018 and by \$15,800 annually thereafter due to elimination of the board. General and special fund revenues decrease due to the bill's prohibition on charging a fee to file a petition for judicial review of a specified OAH decision in circuit court.

(in dollars)	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022
GF Revenue	(-)	(-)	(-)	(-)	(-)
SF Revenue	(-)	(-)	(-)	(-)	(-)
GF Expenditure	(\$7,900)	(\$15,800)	(\$15,800)	(\$15,800)	(\$15,800)
Net Effect	\$7,900	\$15,800	\$15,800	\$15,800	\$15,800

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

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 (DLS) concurs with this assessment. (The attached assessment does not reflect amendments to the bill.)

Analysis

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.

Chapter 457 of 2014 limited the jurisdiction of the board by repealing 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 and instead specified that a person may petition for judicial review. This change was made for decisions regarding private psychiatric facilities and private group homes, hospitals and nursing homes, health maintenance organizations, and 18 health occupations boards.

Additionally, pursuant to Chapter 457, the board may only hear 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 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). 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 is considered affirmed. Any party may seek an appeal from a decision of the board. Appeals from a decision of the board are governed by APA.

There is no comparable administrative appeals process applicable to other State agencies. Two other boards of review associated with other agencies have been 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 the Office of Administrative Hearings (OAH) and DHR's final decisions in those cases are subject to immediate judicial review.

Background: The board was established in 1969, predating the 1990 creation of OAH, which modernized administrative appeals practice in Maryland.

In addition to limiting the scope of the board's jurisdiction, Chapter 457 of 2014 also required DHMH to study the continued role of the board and to report its findings and recommendations on whether the appellate jurisdiction of the board should be further limited. In its November 2015 report, DHMH recommended abolishing the board. Specifically, DHMH recommended that legislation be introduced in the 2016 legislative session that would direct the board to stop accepting new cases in June 2016 and repeal the board in December 2016. Such legislation was not introduced in the 2016 session.

According to DHMH, the creation of OAH has rendered the board's appeals process unnecessary; cases still under the board's jurisdiction may undergo a protracted administrative appeals process. Further, DHMH advises that it has not observed any negative impact to Medicaid or to litigants after enactment of Chapter 457 (which allowed parties to bypass the board and petition for judicial review in contested cases of Medicaid eligibility and participation).

As reflected in the board's 2016 annual report to DHMH, the number of appeals received per calendar year has decreased significantly since enactment of Chapter 457. **Exhibit 1** shows the number of appeals received per calendar year since 2012.

Exhibit 1
Number of Appeals Received by the Board of Review
Calendar 2012-2016

<u>Calendar Year</u>	<u>Number of Appeals Received</u>
2012	196
2013	312
2014	169
2015	47
2016	22

Source: *Annual Report of the Board of Review to the Department of Health and Mental Hygiene* (2016)

State Revenues: If a petition for judicial review of an OAH decision is filed by a Medicaid recipient, applicant, or authorized representative in circuit court, OAH may not charge the

petitioner a fee for the costs of transcription or the preparation or delivery of OAH records to the circuit court or to a party. OAH advises that it does not currently charge these fees for such cases.

The bill also prohibits a court or an officer of the court from charging a fee to an individual petitioning for judicial review of an OAH decision in a Medicaid fair hearing contested case. OAH advises that in fiscal 2016, nine such decisions were appealed to circuit courts. The Judiciary advises that the filing fee is \$165; of this, \$80 is distributed to the general fund, \$55 is distributed to the Maryland Legal Services Corporation Fund, and \$30 is distributed to the Real Property Improvement Fund. Thus, general and special fund revenues decrease minimally beginning in fiscal 2018, which reflects the bill's January 1, 2018 effective date for these provisions.

State Expenditures: DHMH advises that, as of January 2017, the board has 246 pending cases. Of these, 155 were filed by one law firm; however, these cases were granted indefinite postponements due to a change in legal representation and are unlikely to be scheduled for hearings. Therefore, in practice, the board has 91 pending cases. In calendar 2016, the board met seven times and heard 87 appeals, although nearly 75% of the appellants in these cases failed to appear for the hearing. In fiscal 2016, the board received 43 cases and resolved 23.

The bill prohibits the board from accepting new cases beginning June 1, 2017. This analysis assumes that the board continues to meet in June 2017 to resolve remaining cases; therefore, there is no impact in fiscal 2017.

The bill repeals the board on January 1, 2018. The budgeted cost for the board in fiscal 2018 is \$15,825. This includes per diems for board members, court reporters, and printing costs. The board is supported by one employee of DHMH's Office of Governmental Affairs and two employees of the Office of the Attorney General, who also have other responsibilities within the department. DHMH advises that these employees spend a minimal amount of time on board activities.

This analysis assumes that the board continues to meet regularly until January 1, 2018, and that any staff positions associated with the board are not eliminated but instead shift to other duties within DHMH after the board ceases operations. Therefore, general fund expenditures for DHMH decrease by as much as \$7,913 in fiscal 2018 and by about \$15,825 annually thereafter.

DLS additionally notes that, after the board is repealed, qualifying Medicaid eligibility or participation cases may *only* be appealed to the circuit courts. According to the board's 2016 annual report to DHMH, 11 board decisions were appealed to circuit courts in calendar 2016. The Judiciary additionally advises that, based on limited data, 12 board

decisions and 13 board decisions were appealed to circuit courts in calendar years 2013 and 2014, respectively. The Judiciary is unable to estimate the additional number of cases that may be appealed to the circuit courts under the bill, although it does not anticipate a significant fiscal or operational impact. DLS similarly advises that, given that the number of new cases filed with the board has continued to decline since enactment of Chapter 457 (as shown in Exhibit 1), any increase in the circuit courts' caseload is likely to be minimal.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts); Department of Health and Mental Hygiene; Office of Administrative Hearings; Health Benefit Exchange; Department of Legislative Services

Fiscal Note History: First Reader - February 3, 2017
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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES
Department of Health and Mental Hygiene
Session 2017

**TITLE OF PROPOSAL: Department of Health and Mental Hygiene – Board of Review
Repeal**

Bill Number: HB 127

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PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

 X 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

No impact.