

Department of Legislative Services
Maryland General Assembly
2017 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 668 (Delegate Krebs, *et al.*)
Health and Government Operations

Health Occupations Boards - Regulations and Policy Interpretations - Notice and
Public Meeting Requirements

This bill requires each health occupations board in the Department of Health and Mental Hygiene (DHMH), before submitting a proposed regulation to the Joint Committee on Administrative, Executive, and Legislative Review (AELR Committee) under the Administrative Procedure Act (APA) or before adopting a new policy interpretation of an existing regulation, to (1) send the proposed regulation or new policy interpretation to each licensee or certificate holder electronically or by first-class mail to the licensee's last known electronic or physical address; (2) request that the licensee or certificate holder contact the board with any questions or concerns within 14 days after the date the proposed regulation or policy interpretation was sent; and (3) at least 30 days after sending a proposed regulation or new policy interpretation to licensees and certificate holders, hold a public meeting to discuss any questions or concerns that the board received. The bill does not apply to emergency regulations.

Fiscal Summary

State Effect: General and/or special fund expenditures for some health occupations boards increase by an indeterminate amount beginning in FY 2018, as discussed below. Revenues are likely not affected.

Local Effect: None.

Small Business Effect: Potential meaningful.

Analysis

Current Law/Background:

Proposed Regulations

APA sets forth the requirements for the review of regulations adopted by units of government under the jurisdiction of the Act, including requirements for notice, hearing, review, and publication. A “regulation” is a statement, amendment, or repeal of a statement that has general application and future effect. It is a statement adopted by a unit of government to detail or implement a law administered by the unit or to govern its organization, procedures, and practices. A regulation may be in any form, including a guideline, rule, standard, or statement of interpretation or policy. A regulation is not effective unless it is authorized by statute; therefore, it must contain a citation of the statutory authority for the regulation.

A unit of the Executive Branch that proposes a regulation must submit it for preliminary review by the AELR Committee at least 15 days before the proposed regulation is submitted for publication in the *Maryland Register*. The AELR Committee consists of 10 senators and 10 delegates and is charged by statute with the review of all regulations proposed by units of the Executive Branch.

A proposed regulation may not be adopted until after it is submitted to the AELR Committee and at least 45 days after its first publication in the *Maryland Register*. The unit must permit public comment on the proposed regulation for at least 30 days of the 45-day period after it is first published in the *Maryland Register*. If the AELR Committee determines that it cannot conduct an appropriate review within the 45-day time period and that additional time is needed, the committee can delay the adoption of the regulation by notifying the promulgating unit and the Division of State Documents before the expiration of the 45-day time period. If the promulgating unit is provided with this notice, the unit may not adopt the regulation until it notifies the committee in writing of its intention to adopt the regulation and provides the committee with a further period of review that terminates 30 days after the notice provided to the committee or 105 days after initial publication of the proposed regulation in the *Maryland Register*, whichever is later.

Failure by the AELR Committee to approve or disapprove the proposed regulation during the 45-day period of review may not be construed to mean that the AELR Committee approves or disapproves the proposed regulation. However, the unit may proceed with adoption of the proposed regulation if the AELR Committee has not taken action to either approve or disapprove it.

An Executive Branch unit may adopt a proposed regulation on an emergency basis if the unit declares that emergency adoption is necessary, the proposed regulation and its fiscal impact are submitted to the AELR Committee, and the AELR Committee approves the emergency adoption. A public hearing must be held on the emergency adoption of the proposed regulation if requested by a member of the AELR Committee. APA also sets forth procedures that must be followed if the AELR Committee opposes adoption of a proposed regulation and for the notice and publication of regulations once they are adopted.

In general, the effective date of a regulation is the tenth calendar day after the notice of adoption is published in the *Maryland Register* or a later date that the notice sets. The effective date of a regulation after its emergency adoption is the date that the AELR Committee sets.

In submitting regulations to the AELR Committee, all agencies, including health occupations boards, must indicate whether the proposed regulations were considered at an open meeting and/or that the final action will be considered at an open meeting; these statements are included in the Notice of Proposed Action that is published in the *Maryland Register*. The notice also invites public comments to be sent to DHMH via mail, fax, phone, or email.

Open Meetings Act

Health occupations boards must comply with the Open Meetings Act. Under the Act, with limited exceptions, a “public body” must (1) provide reasonable advance notice of the time and location of meetings and (2) meet in open session in a location that is reasonably accessible to attendees. Pursuant to Chapter 255 of 2016, generally, a public body must make an agenda available to the public prior to meeting in an open session. The agenda must include known items of business or topics to be discussed at the meeting and indicate whether the public body expects to close any portion of the meeting in accordance with State law. As soon as practicable after each open session, a public body must prepare minutes of the meeting. Minutes of each meeting must be made available to the public during normal business hours and must be retained by the public body for at least five years.

Health Occupations Boards

There are 20 health occupations boards in DHMH. **Exhibit 1** shows the estimated number of active licensees or certificate holders under each board for fiscal 2018 according to DHMH, and the number of regulations submitted to AELR by each board in fiscal 2016.

Exhibit 1
Number of Active Licensees or Certificate Holders and Number of Regulations Submitted by Each Health Occupations Board

<u>Board</u>	<u>Number of Active Licensees or Certificate Holders (Fiscal 2018 Estimate)</u>	<u>Number of Regulations Submitted to AELR (Fiscal 2016)</u>
Acupuncture	2,115	1
Audiologists, Hearing Aid Dispensers, and Speech-Language Pathologists	4,702	2
Chiropractic	1,636	0
Dental	16,467	4
Dietetic Practice	1,802	0
Environmental Health Specialists	998	0
Massage Therapy	4,455	0
Morticians and Funeral Directors	1,824	3
Nursing*	236,385	4
Nursing Home Administrators	557	0
Occupational Therapy	4,144	1
Optometry	975	0
Pharmacy	24,124	6
Physicians**	47,635	11
Physical Therapy	8,196	0
Podiatry	610	1
Professional Counselors and Therapists	7,828	0
Psychologists	3,535	0
Residential Child Care Program Professionals	1,077	0
Social Work	13,977	0
Total	383,042	33

*Total number of licenses and certificates issued as of January 2017.

**Total number of licensees in fiscal 2016.

Source: Department of Health and Mental Hygiene; Department of Legislative Services

Health occupations boards generally post links to proposed regulations on their websites or include mention of the proposed regulations in board newsletters, agendas, and/or minutes. As of February 2017, five of the health occupations boards that submitted regulations in fiscal 2016 have explicit links to proposed regulations currently under consideration on their website. Some boards also include links to significant or official policy statements on their websites.

State Expenditures: Of the nine health occupations boards that submitted regulations to the AELR Committee in fiscal 2016, the State Board of Physicians (MBP), the State Board of Nursing (BON), the State Board of Pharmacy (BPH), and the State Board of Dental Examiners submitted the highest number of regulations and generally have the most licensees and certificate holders. These boards generally advise that the bill results in a significant fiscal and operational impact.

Specifically, MBP and BPH each advise that additional personnel are needed to coordinate the expected influx of comments from licensees under the bill. BPH and BON additionally advise that the boards' information technology systems are not sufficient to electronically send proposed regulations or policy statements and/or track responses.

DHMH's Health Boards and Commissions estimates that each health occupations board incurs approximately \$162,500 under the bill each time a new regulation or policy interpretation is proposed; this assumes that 50 meetings are held annually for each regulation or policy interpretation to accommodate all licensees and that regulations and policy interpretations are mailed to each licensee and certificate holder rather than sent electronically.

The Department of Legislative Services (DLS) agrees that the bill likely has a significant operational impact on health occupations boards. The bill institutes additional requirements *before* regulations undergo the current AELR Committee review and promulgation process and *before* a policy interpretation may be adopted. In particular, each board must wait a minimum of 30 days after a proposed regulation or policy interpretation is sent to licensees before submitting the proposed regulations to the AELR Committee or adopting the policy. Thus, the bill likely results in significant delays in regulatory and policy action.

With the exception of the State Board of Nursing Home Administrators and the State Board for Certification of Residential Child Care Program Professionals, all health occupations boards are specially funded. Although the bill likely results in a fiscal impact for some health occupations boards, DLS advises that the extent of this impact cannot be reliably estimated.

The bill requires each health occupations board to send proposed regulations or policy interpretations to each licensee or certificate holder; while this may be done electronically, not all boards maintain current email addresses for each licensee or certificate holder (for example, BON advises that it only has email addresses for 75% of its licensees and certificate holders). Thus, to the extent a health occupations board must mail regulations to licensees or certificate holders, expenditures increase – the impact varies for each board and depends on several factors: (1) the number of licensees or certificate holders under each board; (2) the number and length of regulations or policy interpretations proposed each fiscal year; and (3) the number of licensees or certificate holders for which the board does not maintain a current email address, which cannot be reliably estimated for each board at this time.

Expenditures may also increase for each board to coordinate the receipt of additional public comments; however, this impact depends on the proportion of licensees and certificate holders that choose to submit comments and the method by which these comments are submitted (*e.g.*, electronically, mail, etc.), which is not specified in the bill. Further, expenditures may also increase for those boards that must hold separate meetings to consider proposed regulations or policy interpretations instead of considering the regulations or policies at regular board meetings, depending on whether regularly scheduled board meetings are convenient and practical for the specific regulation or policy interpretation under consideration.

Therefore, to the extent that the bill results in additional costs to send proposed regulations or policy interpretations to licensees and certificate holders, to coordinate receipt of comments, and to hold public meetings, general and/or special fund expenditures for some health occupations boards increase by an indeterminate amount beginning in fiscal 2018.

DLS notes that the ability of the health occupations boards to submit emergency regulations is unchanged by the bill. This may allow health occupations boards to minimize fiscal and operational impacts of the bill by proposing more regulations on an emergency basis. However, as noted previously, proposed regulations that are granted emergency status are not subject to the same public comment and other APA procedures as nonemergency regulations, although they must be approved by a vote of the committee.

Small Business Effect: Although licensees and certificate holders of health occupations boards are given more opportunities for comment and involvement in the adoption of regulations and policy interpretations, licensees and certificate holders may also be subject to delayed regulatory and policy action under the bill.

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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