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FISCAL AND POLICY NOTE
Enrolled

Senate Bill 549

(Chair, Education, Health, and Environmental Affairs
Committee)

Education, Health, and Environmental Affairs

Health and Government Operations

**State Board of Physicians and Allied Health Advisory Committees - Sunset
Extension and Program Evaluation**

This emergency bill extends the termination date of the State Board of Physicians (MBP) and its related allied health advisory committees by five years to July 1, 2023. The bill generally implements recommendations of the Department of Legislative Services' (DLS) December 2016 full sunset evaluation of MBP. The bill requires DLS to conduct a direct full evaluation of MBP by December 1, 2021. The bill limits the scope of the next sunset evaluation to (1) the implementation of DLS' recommendations from the December 2016 sunset evaluation; (2) the efficacy of the two-panel disciplinary system; and (3) the impact of criminal history records checks (CHRCs) on MBP and its licensees.

Fiscal Summary

State Effect: Special fund revenues and expenditures for MBP are maintained beyond FY 2018. The FY 2018 operating budget includes a \$10,091,088 special fund appropriation for MBP. MBP can undertake the required actions and submit the required reports with existing resources.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary/Current Law:

Sexual Misconduct Complaints Reporting Requirements

Currently, all health occupations boards must submit a statistical report to the Secretary of Health and Mental Hygiene regarding the number of sexual misconduct complaints received and the resolution of each complaint. The Department of Health and Mental Hygiene compiles this information into an annual report for the General Assembly.

The bill establishes specific reporting measures for these reports. Specifically, the reports must include, for each health occupations board, (1) the total number of sexual misconduct complaints received; (2) the number of practitioners and complainants involved in the complaints; (3) the number of complaints still under investigation; (4) the number of complaints closed with no disciplinary action; (5) the number of complaints that resulted in informal or nonpublic action; (6) the number of complaints referred to the Office of the Attorney General for prosecutorial action; (7) the number of complaints resulting in denials of licensure, reprimands, probations, suspensions, and revocations; (8) the number of complaints forwarded to law enforcement for possible criminal prosecution; and (9) if other actions were taken, a detailed breakdown of the types of action.

Drug Therapy Management Program

Under current law, the Drug Therapy Management Program authorizes physicians and pharmacists to enter into a therapy management contract that specifies treatment protocols for patient care. An authorized prescriber who has entered into such an agreement must submit specified documentation to the health occupations board that regulates the prescriber.

The bill authorizes a health occupations board to enter into an agreement with the State Board of Pharmacy that requires authorized prescribers regulated by the health occupations board to submit documentation to the State Board of Pharmacy instead of the health occupations board.

Criminal History Records Checks

Pursuant to Chapter 34 of 2015, effective July 1, 2015, applicants for initial licensure from MBP must submit to a CHRC as a qualification for initial licensure; effective October 1, 2016, licensees applying for renewal or reinstatement must also submit to a CHRC. In determining whether to renew or reinstate a license, statute requires MBP to consider specified factors relating to the results of a CHRC.

The bill clarifies that these factors must be considered before determining whether disciplinary action should be taken against a licensee who renewed or reinstated a license based on the results of a required CHRC, rather than in determining whether to renew or reinstate a license. Further, the bill requires each licensee who applies for reinstatement after failing to renew to submit to a CHRC, regardless of the length of time that has passed after failing to renew. Additionally, the board may not renew or reinstate a license unless the licensee or applicant attests to having submitted to a required CHRC.

The bill also exempts the following individuals, who are currently authorized to practice medicine in the State without a license under specified circumstances, from the requirement to submit to a CHRC: (1) a medical student or an individual in an approved postgraduate medical training program who is performing assigned duties at any office of a licensed physician, hospital, clinic, or similar facility; (2) a physician who is licensed by and resides in another jurisdiction; (3) a physician who is employed by the federal government while performing duties incident to that employment; (4) a physician who resides in and is authorized to practice medicine by any state adjoining Maryland and whose practice extends into Maryland; and (5) an individual under the supervision of a licensed physician and who has specialty training in psychiatry.

Finally, the bill also institutes reporting requirements for MBP relating to CHRCs. Specifically, MBP must include in the annual report due by October 1 of each year the following information: (1) the number of initial and renewal licenses issued; (2) the number of positive and negative CHRCs received; (3) the number of individuals denied initial or renewal licensure due to positive CHRCs; and (4) the number of individuals denied initial or renewal licensure due to reasons other than a positive CHRC. In the report required to be submitted in 2019, the board must also comment on specified information relating to the impact of the CHRC process on the board and licensees.

Office of Administrative Hearings

In uncodified language, Chapter 539 of 2007 required the Chief Administrative Law Judge of the Office of Administrative Hearings (OAH) to designate a pool of administrative law judges to hear cases referred by MBP. The bill repeals this requirement. Chapter 539 also required, through uncodified language, that MBP provide annual training to OAH. The bill codifies this requirement, but it specifies that training be provided on an as-needed basis, rather than annually.

Naturopathic Doctors

Chapters 153 and 399 of 2014 added naturopathic doctors to the jurisdiction of MBP. However, the definition of “allied health professional” currently does not include naturopathic doctors.

The bill amends the definition of “allied health professional” to specifically include naturopathic doctors and makes a series of conforming changes.

Peer Review Requirements in Standard of Care Cases

Statute requires that a disciplinary panel of MBP refer any allegation in a complaint based on standard of care for two peer reviews. The bill clarifies that the disciplinary panel must only refer a complaint for peer review if the panel decides, *after completing the preliminary investigation*, that the licensee may have committed a standard of care violation.

Hospital and Alternative Health System Disciplinary Reporting

Statute currently requires each hospital and related institution to report the number of denials or limitations on physician privileges and disciplinary actions taken against employed physicians or individuals in a postgraduate medical training program to MBP every six months; alternative health systems are required to report similar information. These entities must also submit a report to MBP within 10 days of any action taken.

The bill repeals the six-month reporting requirement and requires hospitals and related institutions and alternative health systems to only submit reports within 10 days of any action taken. The bill also removes unlicensed medical practitioners from inclusion in such reports.

Unauthorized Practice of Medicine and Failure to Renew a License

Statute currently authorizes MBP to fine physicians who fail to renew their licenses but continue to practice medicine; however, this authority does not apply if the physician applies for renewal within 60 days after the license expires.

The bill clarifies that MBP’s authority to fine physicians who fail to renew their licenses does not apply to a *former* licensee if less than 60 days have elapsed since the expiration of the license *and* the former licensee has applied for license reinstatement and has paid the reinstatement fee.

Disciplinary Matters

Currently, proceedings involving the unauthorized practice of medicine, denials of initial licenses, certain denials of renewals or reinstatements, and cease and desist orders require action by the full board. The bill shifts these proceedings from the full board to the board’s disciplinary panels. Further, the bill authorizes a disciplinary panel, rather than the board, to levy specified civil fines.

Statute also currently requires the board or a disciplinary panel to give a physician or respiratory care practitioner an opportunity for a hearing before taking disciplinary action, except as otherwise provided in the Administrative Procedure Act. The bill incorporates all allied health professions, as well as denials of licensure by disciplinary panels, into these requirements.

The bill also conforms requirements for naturopathic doctors and polysomnographic technologists with requirements for other allied health professions by requiring that such licensees notify the board of a change in name or address within 60 days of the change. A licensee who fails to comply is subject to an administrative penalty of \$100.

Finally, under current law, a person who practices or attempts or offers to practice naturopathic medicine in the State without a license is guilty of a felony and on conviction is subject to imprisonment for up to five years and/or a fine of up to \$10,000. The board may also assess a civil fine of up to \$50,000. The bill specifies that (1) these penalties apply to a violation of *any* provision of the Maryland Naturopathic Medicine Act; (2) a disciplinary panel may levy the civil fine, rather than the board; and (3) any collected penalties must be paid to the board's special fund.

Additional Reporting Requirements

The bill requires MBP to include the following additional information in its annual report due October 1, 2017: (1) a description of the board's efforts to meet the goal of issuing licenses within 10 days after receipt of the last qualifying document, especially for allied health professionals; and (2) whether it is feasible to describe any underlying sexual misconduct in board order summaries and other steps the board can take to make it easier for the public to determine whether a disciplinary case involved sexual misconduct.

The bill requires MBP to include the following additional information in its annual report due October 1, 2019: (1) the results of the internal fiscal analysis and reassessment of fees recommended by DLS in the 2016 sunset evaluation; (2) comments on the board's fund balance; and (3) steps the board has taken to address ongoing issues with filling staff vacancies and the impact that filling vacancies will have on the board's expenditures and fund balance.

Additionally, the bill codifies existing reporting requirements relating to disciplinary information by requiring this information to be included in the board's annual report.

Background:

State Board of Physicians and Related Allied Health Advisory Committees

MBP is charged with enforcing the Maryland Medical Practice Act and the Maryland Physician Assistants Act. Among its duties, MBP must (1) adopt regulations to carry out the provisions of law for which it is responsible; (2) establish policies for board operations; (3) oversee licensing of physicians and allied health professionals; (4) review and investigate complaints; (5) report on all disciplinary actions, license denials, and license surrenders; (6) appoint members of the disciplinary panels; and (7) develop and approve an annual report. The board consists of 22 members; membership is drawn in accordance with statute.

Statutory provisions place several allied health professions under the jurisdiction of MBP and establish seven allied health advisory committees that assist MBP in its oversight role. These committees are composed of representatives of the regulated professions, physicians, and consumers. The allied health professions under the jurisdiction of MBP are (1) physician assistants; (2) radiographers, radiation therapists, nuclear medicine technologists, and radiologist assistants; (3) respiratory care practitioners; (4) polysomnographic technologists; (5) athletic trainers; (6) perfusionists; and (7) naturopathic doctors.

Maryland Program Evaluation Act

MBP is among 70 regulatory entities and activities currently subject to periodic evaluation under the Maryland Program Evaluation Act. The Act establishes a process better known as “sunset review,” as most entities evaluated are also subject to termination, including MBP, which is scheduled to terminate July 1, 2018. In 2016, DLS conducted a full sunset evaluation of MBP and the allied health advisory committees, [*Sunset Review: Evaluation of the State Board of Physicians and Allied Health Advisory Committees*](#).

DLS found that the board generally fulfills its stated mission to protect the public by effectively regulating physicians and allied health professionals. DLS specifically found that the board had made significant progress and had addressed most of the issues identified in the 2011 sunset evaluation. However, due to relatively recent implementation, DLS was unable to fully evaluate some key changes, specifically the board’s two-panel disciplinary system and the impact of CHRCs on the board and licensees. Additionally, DLS found that the board could continue to improve certain aspects of its operations and that some issues identified in the 2011 sunset evaluation remained. Based on these findings, DLS recommended extending the termination date for MBP and the related allied health advisory committees by five years (until July 1, 2023). The report presented a total of 19 recommendations, the majority of which are reflected in this bill.

Additional Information

Prior Introductions: None.

Cross File: HB 1265 (Chair, Health and Government Operations Committee) – Health and Government Operations.

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

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