

Department of Legislative Services  
Maryland General Assembly  
2022 Session

FISCAL AND POLICY NOTE  
Third Reader - Revised

Senate Bill 77

(Senator West)

Education, Health, and Environmental Affairs

Health and Government Operations

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Health Occupations Boards – Investigations – Right to Counsel

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This bill authorizes a licensee, certificate holder, or registration holder who is subject to an investigation by a health occupations board that may result in charges or sanctions to be represented by counsel during the investigation and have counsel present to participate in any interview conducted by or on behalf of the health occupations board during the investigation. Counsel may (1) ask questions of the represented party; (2) ask that a question be clarified; (3) provide advice to the represented party; and (4) provide information relevant to the investigation on behalf of the represented party. A health occupations board (or agent of the board) may exclude counsel from an investigation or interview if there is evidence that counsel is substantially interfering with the investigation or interview and violating the Rules of Professional Conduct or acting in a manner that is prejudicial to the administration of justice.

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Fiscal Summary

**State Effect:** The bill does not substantively change State activities or operations.

**Local Effect:** None.

**Small Business Effect:** Potential minimal.

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Analysis

**Current Law:** Twenty health occupations boards share responsibility for regulating various health professions in Maryland. **Exhibit 1** lists the boards within the Maryland Department of Health. With specified exceptions, an individual must be licensed, certified, registered, or permitted by the respective health occupations board before the individual

may practice in the State. Licensure, certification, registration, and permit requirements vary by profession but typically require, among other things, specified education and experience, passage of a national and/or State examination, and a criminal history records check.

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**Exhibit 1**  
**Health Occupations Boards in the Maryland Department of Health**

Acupuncture  
Audiologists, Hearing Aid Dispensers, Speech-Language Pathologists, and Music Therapists  
Chiropractic  
Dental  
Dietetic Practice  
Environmental Health Specialists  
Massage Therapy  
Morticians and Funeral Directors  
Nursing  
Nursing Home Administrators  
Occupational Therapy  
Optometry  
Pharmacy  
Physical Therapy  
Physicians  
Podiatry  
Professional Counselors and Therapists  
Psychologists  
Residential Child Care Program Professionals  
Social Work

Source: Department of Legislative Services

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With limited exceptions, individuals who are licensed, certified, registered, or permitted by a health occupations board have a right to counsel at a sanctioning hearing. A similar right to counsel is not specified in statute or regulations for a licensee or certificate holder during the investigation of a complaint.

To the extent permitted by existing resources and deemed practicable, each health occupations board must establish a disciplinary subcommittee, which must (1) be responsible for the investigation of complaints; (2) determine whether the board should

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bring charges against a licensee or certificate holder; and (3) participate in pre-adjudication case resolution conferences resulting from the charges.

A health occupations board may not bring charges against a licensee or certificate holder based solely on events contained in a complaint that the board receives more than six years after the day the complainant discovered the facts that form the basis of the complaint or the day when a reasonable person exercising due diligence should have discovered the facts that form the basis of the complaint. This time limitation does not apply to a complaint based on (1) criminal convictions or sexual misconduct or other similar boundary violations; (2) reciprocal discipline matters; (3) ongoing substance abuse; (4) fraudulent concealment of material information; or (5) acts that occur while a patient is a minor.

Each health occupations board must adopt specific sanctioning guidelines including a range of sanctions based on historical data or a normative process for each type of violation and a list of mitigating and aggravating circumstances that may be used to decide if a sanction falls within or outside the established range of sanctions. If a board departs from the sanctioning guidelines, the board must state its reasons; however, any departure from the guidelines alone is not grounds for hearing or appeal of board action.

Each health occupations board must post any final, public order for a disciplinary sanction issued to a licensee or certificate holder on its website.

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### **Additional Information**

**Prior Introductions:** None.

**Designated Cross File:** None.

**Information Source(s):** Maryland Department of Health; Department of Legislative Services

**Fiscal Note History:** First Reader - January 25, 2022  
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Analysis by: Amber R. Gundlach

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