



Board of Physicians

Larry Hogan, Governor · Boyd K. Rutherford, Lt. Governor · Damean W.E. Freas, D.O., Chair

February 11, 2021

The Honorable Shane E. Pendergrass
Chair, Health and Government Operations Committee
Room 241 House Office Building
Annapolis, MD 21401-1991

RE: HB 344- Open Meetings Act – Requirements for State Agencies and Local Boards of Elections (Maryland Transparency Act of 2021) – Letter of Concern

Dear Chair Pendergrass:

The Maryland Board of Physicians (the “Board”) is submitting this Letter of Concern for HB 344 – Open Meetings Act – Requirements for State Agencies and Local Boards of Elections (Maryland Transparency Act of 2021).

Maryland's Open Meetings Act (the “Act”) requires most State and local public bodies to hold public meetings, give the public adequate notice of those meetings, and to allow public inspection of meeting minutes. The Act, however, permits public bodies to discuss some topics confidentially. The Act's goals are to increase the public's faith in government, ensure the accountability of government to the public, and enhance the public's ability to participate effectively in our democracy.

HB 344 proposes several changes to the Act related to the open session materials required to be made available to the public. While the Board supports transparency for the public, the Board's concerns relate to matters that have a legitimate need for confidentiality; the significant fiscal impact; and related administrative issues.

Currently, the Board holds multiple regularly scheduled monthly meetings: full board and/or a disciplinary panel meeting every other week and monthly allied health committee meetings for 7 different allied health practitioners. Information about the scheduled meeting is published regularly on the website, and the agendas are posted a week in advance. During the current state of emergency meetings are virtual and included on all agendas is the open meeting access information. Minutes are also made available to the public once voted on and approved by the Board.

The Board's concerns with HB 344 are as follows:

1. Meeting Material. On page 6, lines 1-7 regarding §3-302.1(C)(2): The requirement to post the agenda and *all meeting materials*. The term "all meeting materials" is not defined and should be addressed. Posting all open meeting information with the agenda is problematic as open meeting materials may include Board Counsel advice, as well as information not otherwise disclosable under the Public Information Act. For instance, including but not limited to, race, social security numbers, date of birth, signature and file photos captured specifically for the Board's regulatory oversight purposes. The bill appears to assume that anything posted with an open agenda is wholly disclosable, and does not address this concern.
2. Record Retention. The live video or audio streaming and retention, the transcription requirement for a minimum of one year, and the meeting minute posting requirement of 5 years is problematic language on many levels. The Board meets twice a month, with meetings averaging 8 hours in length. There will be a significant fiscal impact to the Board to meet the requirements of HB 344. The appropriate technology to live stream meetings, store and archive materials, IT staff expenses and certain added administrative expenses are currently indeterminate. The Board's current internet access is unreliable in the Board room, and would also need an upgrade as well as additional storage requirements.

Additionally, the Board has several licensee categories that consider several matters at Panel meetings including applications, delegation agreements, evaluation and treatment protocols, and the corresponding meeting material is voluminous. Posting in accordance with HB 344 will have negative implications on the storage capacity and it is anticipated that the information to be posted could overwhelm the Board's storage capacity and slow retrieval processes. Consequently, the Board's public protection mandate may be adversely affected when the volume of materials hinders retrieval processes not only regarding open meeting information but certain public protection information. This Board holds 2 Panel meetings a month which, at a minimum, doubles the amount of information this Board would be required to post on the website under the bill.

To further compound storage capacity limitations, this Board already has several records including rosters of licensees, designated as immediately available, posted on the Board's website. Adding more may overwhelm the Board's systems.

The availability of all the items required to be retained by HB 344 would be unedited and difficult to follow. The Board believes that the agenda and meeting minutes that document and memorialize the decisions that are made by public bodies are much more important to publish than full videos and transcripts. The retention language in HB 344 should be removed.

3. Bill Inconsistency: The following provisions seem to conflict and should be reconciled:
 - a. Page 6, lines 11-13: [(d)] (E) (1) A public body required to make available an agenda under [subsection (a)] **SUBSECTION (B) OR (C)** of this section may make available the agenda using a method authorized for giving notice under § 3–302(c) of this subtitle.

b. Page 6, lines 1-2: **(2) EACH PUBLIC BODY SUBJECT TO THIS PARAGRAPH SHALL MAKE PUBLICLY AVAILABLE ON ITS WEBSITE AN AGENDA AND ALL MEETING MATERIALS:**

4. Board Member Privacy Concerns. Prior to the pandemic, as a standard practice, the Board did not record open sessions. However, during the pandemic, the Board is holding its meetings virtually. Under the bill, Board members would be subjected to the possibility of their images being available on the website and being manipulated and used without their authorization. The bill creates no restrictions or limitations on what can be done with the recordings posted on the website, and the Board will have no control over what may be done with them. Even if inappropriate use of posted materials is reported to the Board, there is no recourse to address and hold a person accountable for improper use of materials.

For these reasons, the Board respectfully requests that the bill be amended to address the outlined concerns. Thank you for your consideration of this information. If you have questions or need additional information, please contact Wynne E. Hawk, 410-764-3786.

Sincerely,



Christine A. Farrelly
Executive Director

cc: Members of the Health and Government Operations Committee
Webster Ye, MDH

The opinion of the Board expressed in this document does not necessarily reflect that of the Maryland Department of Health or the Administration.