



Maryland Health Occupations Boards

4201 Patterson Avenue
Baltimore, MD 21215

Maryland Board of Nursing

4140 Patterson Avenue
Baltimore, MD 21215

Maryland Board of Occupational Therapy Practice

Spring Grove Hospital Center
55 Wade Avenue, Tuerk Bldg.
Baltimore, MD 21228

Maryland Board of Dental Examiners

Spring Grove Hospital Center
55 Wade Avenue, Benjamin Rush Bldg.
Baltimore, MD 21228

**2022 SESSION
POSITION PAPER**

BILL NO: SB 899
COMMITTEE: Education, Health, and Environmental Affairs
POSITION: Oppose

TITLE: Health Occupations Boards – Authority Over Staffing and Infrastructure Operations

BILL ANALYSIS: This Bill transfers authority over the Health Occupations Boards’ “infrastructure operations” from the boards themselves to the Secretary of Health. Additionally, the Bill gives the Secretary the authority to employ a staff for each board and designate one staff member as executive director (both in consultation with the specific board) and grants the Governor the authority to appoint a board member as board chair/president (again in consultation with the specific board). The Bill also includes further changes related to these provisions.

POSITION AND RATIONALE: The State Acupuncture Board; State Board of Examiners for Audiologists, Hearing Aid Dispensers, Speech-Language Pathologists and Music Therapists; State Board for Certification of Residential Child Care Program Professionals; State Board of Chiropractic Examiners; State Board of Dental Examiners; State Board of Environmental Health Specialists; State Board of Massage Therapy Examiners; State Board of Morticians and Funeral Directors; State Board of Nursing; State Board of Examiners of Nursing Home Administrators; State Board of Occupational Therapy Practice; State Board of Examiners in Optometry; State Board of Pharmacy; State Board of Physical Therapy Examiners; State Board of Podiatric Medical Examiners; State Board of Professional Counselors and Therapists; State Board of Psychologists; and State Board of Social Work Examiners oppose SB 899.

The Boards understand that the Department of Health and Secretary believe the legislation is necessary to ensure smooth and uniform operations across the 20 Health Occupations boards. The Boards, however, believe the legislation as proposed is vague and overly broad, unnecessarily politicizes the boards’ internal governance, decreases the boards’ autonomy, and adds additional unintended administrative duties for the Secretary.

1. The proposed legislation transfers authority over “infrastructure operations” from the boards themselves to the Secretary.

SB 899 as proposed transfers the boards’ authority over their own “infrastructure operations” – defined as “administrative activities . . . including tools and resources for the use and support of deliberative actions” – to the Secretary. The proposed legislation clarifies that “infrastructure operations” does not include “licensing, investigation, or disciplinary activities,” but it does not otherwise define the term “infrastructure operations.” Because the term “infrastructure operations” is undefined, the boards are unsure what it is meant to include; the term could include a wide range of board operations, from the everyday acquisition of office supplies to information technology systems to board obligations under the Open Meetings Act and Public Information Act to the boards’ core legislative and regulatory operations. The boards believe it may be difficult, if not impossible, to separate “infrastructure operations” from the boards’ regulatory and policy-making responsibilities and from their “licensing, investigation, and disciplinary activities.” Having two different sources (the Secretary and the Boards) responsible for these two interrelated functions will lead to confusion and conflict. The Boards are concerned that this change could compromise its autonomy where it is most essential – in the policy and practice decisions where the board members’ knowledge and expertise is crucial.

Additionally, the Boards note that the overwhelming majority (if not all) of the boards are more than capable of handling their own infrastructure operations without any cause for concern. Although funding can certainly be an issue for some of the smaller boards in particular, we have continually succeeded in carrying out our core functions and responding to any and all customer/consumer/public complaints. The Boards believe that by enacting this change, the Department and the Secretary will be adding a massive workload to their already busy schedules that will not significantly change the user experience with the boards.

2. The proposed legislation changes the boards’ officer election process and gives the Governor the power and duty to appoint board chairs/presidents in consultation with the specific board.

The legislation as proposed amends the boards’ practice acts to require that the Governor appoint a board chair/president “in consultation with” the board; the proposed legislation further allows the chair/president to select a vice chair/vice president and authorizes the boards to establish a process for the election of any further officers that may be necessary. Currently, the overwhelming majority of boards elect a chair/president from among their peers based on who is in the best position to lead the board in the coming year, a decision based not on seniority or political affiliation, but based on dedication to the board and its mission, the time and wherewithal to represent the board’s interests throughout the year (including in Annapolis), and a sufficient knowledge of board functions to allow a smooth transition and continued board effectiveness year-to-year. Unlike board members, the Governor is simply not in the position to observe and determine who is best suited and qualified to lead the board. The Boards are concerned that this change will turn a board chair/president into a political appointment, determined based on political party and a particular Governor’s goals and policy beliefs, rather than knowledge of administrative operations, foresight related to the practice standards, and the continued smooth operation of the boards. Additionally, the Boards note that changing the selection process for the boards’ chairs/presidents does not address any underlying issues related to infrastructure operations, including a lack of funding and staffing. The Boards appreciate that the Governor would have to at least consult each board regarding the appointment; however, consultation does not require approval or agreement, and the Boards believe the boards themselves are uniquely qualified to select a chair/president.

3. The proposed legislation gives the Secretary authority over the boards' staffing, including the hiring, evaluation, and retention of executive directors.

The proposed legislation further amends the boards' practice acts to allow the Secretary, rather than the boards themselves, to employ a staff for each board and designate one of the staff members as executive director, again in consultation with the specific board. Currently, the vast majority of executive directors serve at the pleasure of the board and are hired and evaluated by the board. As with the chair/president position, the boards hire executive directors who have the skills and experiences necessary to lead the specific board's mission and day-to-day operations based on the particular demands of that board and that practice. Again, the Secretary is simply not in the same position as the boards to make such a decision for that practice, nor does the Secretary have as much time as the boards do to dedicate to the hiring and evaluation process. In addition, the Boards note that, as above, changing the appointment process does not address any underlying structural issues related to a lack of funding and staffing. Although the Boards once again appreciate that each board would at least be consulted on these decisions, the Boards again note that consultation is not approval or agreement and believes that the boards should be fully empowered to employ their own staff.

Importantly, the Boards note that Md. Code Ann. Health Occ. § 1-217 already provides that the Secretary "shall confirm the appointment of each administrator or executive director to each health occupations board authorized to issue a license or certificate under this article." Essentially, the law already provides the Secretary veto power over the boards' employment of an executive director, which provides the Department with direct input on the boards' hiring decisions.

In situations in which the Secretary would act with respect to a board's function, the Bill does not address circumstances in which the Secretary has a conflict of interest or has communicated with people outside of an official board proceeding. The major concern of the Boards is that involvement by the Secretary can inject political influence into the boards' processes. This concern is only enhanced if the Bill does not require the Secretary's recusal in cases in which the Secretary has a conflict of interest or has been influenced by communications outside of a board's proceeding.

The Boards are also concerned that the Secretary having control over staffing the boards could eventually lead to the consolidation of staff across boards, particularly in times of state budget constraints. Most boards, however, are dealing with a shortage of appropriate staff, not an overabundance, and the particular intricacies of each board's statutes and regulations make sharing staff an especially difficult undertaking. Further, the Boards note that the Secretary is also a political appointee, and it would be difficult, if not impossible, to ensure smooth board operations if the entire staff is at risk of being replaced every four years. The Boards are concerned that all boards' decisions, which should be focused at all times on the health, safety, and welfare of the people of Maryland, could be compromised if the boards are turned into fully political bodies.

Finally, the Boards note that another relevant bill, SB 440 (cross-filed with HB 625), has already been considered by this Committee. That Bill, entitled "Commission to Study the Health Care Workforce Crisis in Maryland – Establishment," establishes a commission to study various issues potentially affecting the number of health care workers working in Maryland. Among the issues the commission would be empowered to study and report on would be the boards' licensing system and processes and "the relationship between the health occupations boards and the Maryland Department of Health," including

the Secretary's authority over the boards and additional services the Department could provide to the boards. Given the scope of the commission's study, the Boards believe SB 899 is premature.

The Boards appreciate the Committee's consideration of its concerns and reservations about this Bill and strongly believes any concerns the General Assembly has about the operations of the boards can be more readily addressed under the existing board structure, without further complicating or politicizing the boards' operations.

For all of these reasons, the State Acupuncture Board; State Board of Examiners for Audiologists, Hearing Aid Dispensers, Speech-Language Pathologists and Music Therapists; State Board for Certification of Residential Child Care Program Professionals; State Board of Chiropractic Examiners; State Board of Dental Examiners; State Board of Environmental Health Specialists; State Board of Massage Therapy Examiners; State Board of Morticians and Funeral Directors; State Board of Nursing; State Board of Examiners of Nursing Home Administrators; State Board of Occupational Therapy Practice; State Board of Examiners in Optometry; State Board of Pharmacy; State Board of Physical Therapy Examiners; State Board of Podiatric Medical Examiners; State Board of Professional Counselors and Therapists; State Board of Psychologists; and State Board of Social Work Examiners, respectfully urges the Committee to vote unfavorably on SB 899.

Thank you for your consideration. If you have a question for a specific board, please contact Lillian Reese, the legislative liaison for the Boards, at 443-794-4757 or at lillian.reese@maryland.gov who will provide you with their contact information.

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