

Department of Legislative Services
 Maryland General Assembly
 2014 Session

FISCAL AND POLICY NOTE

Senate Bill 849 (Senator Conway)
 Education, Health, and Environmental Affairs

**State Board of Nursing - Nurses, Nursing Assistants, Medication Technicians, and
 Electrologists - Licensing, Certification, Regulation, Violations, and Penalties**

This bill requires an applicant for certification as a certified medication technician (CMT), beginning January 1, 2015, to submit a criminal history records check (CHRC) to the State Board of Nursing. The board must require CHRCs for selected applicants for renewal and each CMT who files for reinstatement after failing to renew for one year or more. An additional CHRC must be performed every 12 years, as is required of other board licensees and certificate holders. Beginning January 1, 2015, the board must establish a rap back program through which the Criminal Justice Information System (CJIS) reports all new and additional criminal history information to the board for an applicant who has been fingerprinted for a CHRC required by the board. The bill also makes numerous changes regarding licensure, certification, and disciplinary actions by the board, including authorizing the board to issue cease and desist orders, seek injunctive relief, and impose civil penalties for specified violations.

Fiscal Summary

State Effect: Potential significant increase in special fund revenues for the State Board of Nursing from the issuance of civil fines for specified violations of the Maryland Nurse Practice Act. Special fund expenditures for the State Board of Nursing increase by at least \$153,500 in FY 2015 to implement the rap back program and for the information technology necessary to process CHRCs for CMTs. Future years reflect annualization and inflation.

(in dollars)	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019
SF Revenue	-	-	-	-	-
SF Expenditure	\$153,500	\$195,200	\$204,200	\$213,600	\$223,500
Net Effect	(\$153,500)	(\$195,200)	(\$204,200)	(\$213,600)	(\$223,500)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary:

Rap Back Program: The board must notify each applicant that the applicant's fingerprints will be retained by CJIS and all new and additional criminal information will be reported to the board. The board may enter into an agreement with CJIS and the Federal Bureau of Investigation to carry out this requirement.

Cease and Desist and Civil Fine Authority: Subject to hearing provisions and in addition to other authorized sanctions, the board may issue a cease and desist order, impose a civil fine of up to \$5,000 per offense, or both for certain violations of the Maryland Nurse Practice Act. These violations are (1) practicing without a license; (2) practicing beyond the scope of the license issued; (3) misrepresentation; (4) sale or fraudulent obtainment of any record, nursing diploma, license, license renewal, certificate, or certificate renewal; (5) practicing under a fraudulent diploma, license, or record; or (6) employing an unlicensed person. Each violation is a separate offense if it occurs at a different time, date, or location or on the same date and location at a different time. All fines must be paid to the State Board of Nursing Fund. The board may refer cases of delinquent payment to the Central Collection Unit of the Department of Budget and Management.

An action may be maintained in the name of the State or the board to enjoin specified prohibited conduct or conduct that is grounds for disciplinary action. An action may be brought by the board (in its own name), the Attorney General (in the name of the State), or a State's Attorney (in the name of the State). An action must be brought in the county where the defendant resides or engaged in the acts sought to be enjoined.

Authority of the Board: The bill specifies that the disciplinary authority of the board vests with the board at the time of application for licensure, practice under the multistate licensing privilege, or certification; continues during the periods of licensure or certification; and includes authority over an individual holding an expired, lapsed, or suspended license or certificate (including temporary licenses or certificates). The authority of the board must be continuous over an individual applicant, licensee, holder of a multistate licensing privilege, or a certificate holder and may not be divested by withdrawal of an application or when a license, temporary license, certificate, or temporary certificate expires or lapses.

Disciplinary Actions: The board may *require terms and conditions* on an agreement with a licensee or certificate holder to accept surrender of a license or certificate. An agreement to accept the surrender of a license or certificate is a final order of the board and is a public record.

The bill repeals language requiring a licensee or certificate holder whose license or certificate has been suspended or revoked to return the license or certificate to the board or file a verified statement that the license has been lost. The bill clarifies grounds for disciplinary action against a licensee or certificate holder practicing on an expired or lapsed license or certificate.

A new ground for discipline for registered nurses (RNs) and licensed practical nurses (LPNs) of misappropriating the property of a patient or a facility is established (this ground already applies to certified nursing assistants (CNAs) and CMTs). In addition to any sanction authorized, the board may require an RN or LPN to comply with specified terms and conditions determined by the board. A board decision regarding an RN or LPN (rather than solely a decision to deny, suspend, or revoke a license) may not be stayed pending judicial review.

Hearing Rights for Certified Nursing Assistants and Certified Medication Technicians: The bill establishes a new section for hearing rights for CNAs and CMTs under Subtitle 8-6A. CNAs and CMTs were previously covered by the hearing provisions for RNs and LPNs. Under this new section, the board is authorized to immediately suspend the certificate of a CNA or CMT who is expelled from the board's rehabilitation program for noncompliance. The board must first provide the certificate holder with (1) an opportunity to show cause by written communication or nontestimonial presentation as to why the suspension should not occur and (2) an opportunity for a hearing that must occur within 30 days after written request by the certificate holder. A certificate holder must prove by a preponderance of the evidence that he or she is not addicted to drugs or alcohol.

After the board conducts an investigation, it may issue an advisory letter to a certificate holder. An advisory letter may be disclosed to the public but may not be considered a disciplinary action or reported to any certifying entity, employer, or insurance company as a disciplinary action. A board decision regarding a CNA or CMT may not be stayed pending judicial review.

Inactive Status for Medical Conditions: The bill authorizes the board to put an RN, LPN, CNA, CMT, licensed electrologist, or licensed electrology instructor on inactive status due to a medical condition that will prevent the individual from practicing. The board may not charge a fee to place a licensee or certificate holder on inactive status or remove the inactive status under these circumstances. Inactive status for a medical condition may

not be considered a disciplinary action nor may it be reported to any certifying entity, employer, or insurance company as a disciplinary action. The bill clarifies the process for a licensee or certificate holder on inactive status to apply for reactivation of his or her license or certificate.

Reinstatement: The bill clarifies the process for reinstatement of a license or certificate. The board may reinstate a license or certificate, reinstate a license or certificate subject to terms and conditions (including a period of probation), or deny a reinstatement of a license or certificate. A licensed electrologist or licensed electrology instructor with a license that has been expired, lapsed, suspended, revoked, or surrendered for more than one year must complete a CHRC as part of the reinstatement process.

Miscellaneous Provisions: The bill alters the penalties for violation of the Maryland Electrologists Act. Rather than a violator of *any provision* of the Act being guilty of a misdemeanor and subject to a fine of up to \$5,000, imprisonment for up to one year, or both, only a violation of the prohibition against misrepresentation that an individual is authorized to practice electrology or teach an electrology program in the State is subject to such penalties.

The bill repeals language prohibiting a person from failing to report the employment or placement of an RN or LPN as required under § 8-504 of the Health Occupations Article, which requires employers to periodically report the name and license number of each licensee employed to practice registered nursing or licensed practical nursing. The associated penalties are also repealed.

Current Law: Applicants for a medication technician certificate must be of good moral character, be at least age 18, successfully complete an approved course in medication administration or a portion of an approved nursing education program, and submit a specified application and fee to the board. Applicants may not have committed any act or omission that would be grounds for discipline or denial of certification nor have a record of abuse, negligence, misappropriation of a resident's property, or any disciplinary action taken or pending in another jurisdiction. CMTs receive a State-only CHRC from each employer as part of the employment process rather than the certification process.

The board requires RNs, LPNs, CNAs, and licensed electrologists to submit to a CHRC as part of the licensure or certification process. Subsequent CHRCs are required upon renewal at least once every 12 years. On receipt of criminal history records information, the board must consider the following factors in determining whether to grant a license or certification:

- the age at which the crime was committed;
- the circumstances surrounding the crime;

- the length of time that has passed since the crime;
- subsequent work history;
- employment and character references; and
- any other evidence that demonstrates whether the individual poses a threat to public health or safety.

Under § 19-1902 of the Health-General Article, before an eligible employee may begin work for an adult dependent care program, the program must apply for a State CHRC or request a private agency to conduct a background check and request a reference from the potential employee's most recent employer. A nurse referral agency must develop and implement a procedure to screen licensed health care professionals and care providers, including a State CHRC or a private agency background check.

Background: The State Board of Nursing is the largest health occupations board, regulating nearly 75% of all health occupations professionals in the State. In fiscal 2013, the board issued about 291,000 licenses or certificates to RNs, LPNs, advanced practice nurses, CNAs, CMTs, and electrologists.

According to the board, the bill is intended to clarify and make consistent the various practice acts of the individuals the board regulates. The board also seeks to clarify that its jurisdiction applies to all individuals licensed or certified by the board (even if a license or certificate expires or an individual allows a license or certificate to lapse), unless a license or certificate is surrendered or revoked.

Criminal History Records Checks for Certified Medication Technicians: The board has contemplated requiring CHRCs of CMTs for several years because CMTs are responsible for direct patient care and have access to medications, as well as to be consistent with current requirements imposed on other board licensees and certificate holders.

The board indicates that 95,394 CMTs are currently certified by the board (this represents a 38% increase since fiscal 2011 alone). CMT certificates are renewed biennially on a rolling basis based on the certificate holder's birth month. Approximately half of CMTs would be subject to a CHRC on renewal in fiscal 2015 and the remaining half in fiscal 2016. The board receives approximately 20,000 new applications for a CMT certificate annually. Each of these applicants would be subject to a CHRC beginning January 1, 2015. Subsequent CHRCs of CMTs would be performed on renewal every 12 years thereafter.

Rap Back Program: Under the federal Patient Protection and Affordable Care Act (ACA), the U.S. Department of Health and Human Services established a nationwide background check program for "prospective direct patient access employees." States are

eligible to apply for grants to design comprehensive criminal background checks for such employees and must test methods that reduce duplicative fingerprinting, including providing for the development of “rap back” capability. Maryland received a three-year grant in January 2013 and is currently developing a Maryland Background Check Program, which will include a rap back process. Individuals included in the rap back process are flagged at the time the original criminal history report is generated by CJIS. When new arrest or updated conviction information is received related to the flagged individual, the system automatically generates a notification to designated parties. The rap back system decreases the need for repeat fingerprinting of individuals in the system, resulting in cost savings for employers.

Cease and Desist Authority: Two health occupations boards (nursing home administrators and physicians) are authorized to issue cease and desist orders. At least four other boards are seeking such authority in separate bills during the 2014 legislative session.

Inactive Status for Medical Conditions: According to the board, occasionally some licensees and certificate holders are reported to the board as being impaired or physically or mentally incompetent when in fact they have medical conditions or disabilities (either temporary or permanent). The board seeks to allow these individuals the option of going on inactive status for a documented medical condition as an alternative to not renewing their license. On inactive status, these individuals may not practice but may use the title of their inactive license or certification.

State Expenditures: Special fund expenditures for the State Board of Nursing increase by at least \$153,526 in fiscal 2015, which accounts for the bill’s October 1, 2014 effective date. This estimate reflects the cost of hiring two administrative specialists and one computer network specialist to assist with implementing the information technology aspects related to CHRCs of CMTs, including developing an interface with existing CHRC programs used by the board and incorporating a rap back process. The board indicates that existing staff can assist with the processing of CHRC paperwork and the investigation of any positive CHRC results (results in which a criminal history is identified). The estimate includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses. The estimate does not include any additional costs associated with obtaining rap back information from CJIS. According to the board, there will be additional expenditures for this purpose, but they are not yet known.

Positions	3
Salaries and Fringe Benefits	\$135,881
One-time Start-up Expenses	11,390
Other Operating Expenses	<u>6,255</u>
Total FY 2015 State Expenditures	\$153,526

Future year expenditures reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

Additional Comments: Each individual subject to a CHRC under the bill will be required to pay \$54.50 for a State and national CHRC including a \$20 fingerprinting fee, a \$16.50 FBI fee, an \$18 fee to CJIS. CJIS collects, manages, and disseminates Maryland Criminal History Record Information for criminal justice and noncriminal justice (*e.g.*, employment and licensing) purposes.

Additional Information

Prior Introductions: None.

Cross File: HB 908 (Delegate Nathan-Pulliam) - 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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mc/ljm

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