

Department of Legislative Services
2010 Session

FISCAL AND POLICY NOTE

Senate Bill 291

(Senator Conway)

Education, Health, and Environmental Affairs

Health and Government Operations

Health Occupations Boards - Revisions

This bill sets standardized guidelines for all health occupations boards regarding the disciplinary process and sanctioning of licensees; board vacancies, membership, and training; the appointment of an executive director; information that must be posted on a board's web site; data collection; and the role of the assistant Attorneys General in the disciplinary process. The bill also requires the Secretary of Health and Mental Hygiene to establish goals for the timeliness of complaint resolution for all of the boards, a group of boards, or a specific board by October 1, 2012. When established by the Secretary, the goals are nonbinding and cannot be used as grounds for any hearing or appeal of any board action. Finally, the bill includes related reporting requirements for each board and the Secretary.

The bill takes effect July 1, 2010, and applies only prospectively to complaints received on or after that date.

Fiscal Summary

State Effect: Minimal increase in special fund expenditures by the Department of Health and Mental Hygiene (DHMH) beginning in FY 2011 for expense reimbursement for board members resulting from additional meetings held to meet the bill's reporting requirement and for meetings of disciplinary committees required by the bill. Revenues are not affected.

Local Effect: None.

Small Business Effect: Potential minimal.

Analysis

Bill Summary: Each board has to establish a disciplinary subcommittee, but only after consultation with the Secretary and to the extent permitted by existing resources.

The bill requires boards that use a system of peer review in standard of care cases to provide a licensee or certificate holder under investigation with an opportunity to review the final peer review report and provide the board with a written response. The board must consider both the report and the licensee's response before taking action.

With certain exceptions, a board may not bring charges against a licensee or certificate holder based solely on events contained in a complaint that was made more than six years after an incident occurred or could have been discovered.

By December 31, 2010, the boards must jointly report to specified legislative committees on their findings from their joint study of circumstances under which a licensee may petition to have disciplinary proceedings expunged from a board's public record. By December 31, 2011, each board must report its success in meeting the goals and requirements of the bill, as well as ways in which separation of the board's disciplinary functions can be further achieved. The Secretary must submit a third report by October 1, 2012, on the goals for the timeliness of complain resolution.

Current Law/Background: Health occupations boards are generally charged with licensing, certifying, and regulating health professionals in a particular medical specialty or area of medical practice defined in law.

Each of the 18 health occupations boards is relatively autonomous and has defined in statute general procedures for the investigation of complaints, as well as the hearing and review process. While grounds on which a license can be denied, revoked, or suspended are relatively uniform from board to board, procedures for disciplinary action vary a great deal and are further defined in regulations.

All of the boards operate through special funds, with the exception of the State Board of Examiners of Nursing Home Administrators, which is the only health occupations board that is general funded.

In May 2007, the Governor directed the DHMH Office of the Inspector General (OIG) to audit the State Board of Dental Examiners with the goal of determining whether the disciplinary operations and sanctioning outcomes of the board incorporated bias and inequities. OIG completed its audit and submitted its final report in December of that year. While OIG found no evidence that the board exceeded its statutory or regulatory

scope of authority in the sanctioning of licensees, it did make a number of recommendations to improve board functions regarding vacancies, disciplinary actions, and data collection.

Chapter 212 of 2008, which enacted many of OIG's recommendations, also created the Task Force on the Discipline of Health Care Professionals and Improved Patient Care to issue recommendations regarding practices and procedures supporting the fundamental goals and objectives of the disciplinary programs of the health occupations boards; potential changes to the organizational structure of the health occupations boards and the relationship of all boards to DHMH; and measures that otherwise enhance the fair, consistent, and speedy resolution of complaints concerning substandard, illegal, or unethical practices by health care professionals. The task force was also charged with studying a number of issues related to the disciplinary system and was required to report its recommendations by December 1, 2008.

The task force submitted its report on February 2, 2009, which included 24 recommendations that can be accomplished either through the existing authority of the Secretary of Health and Mental Hygiene and the boards or through statutory change. This bill includes many of the task force's statutory recommendations, some that the task force indicated can be accomplished through existing board authority, and some additional changes not included in the report.

The number of investigators and Attorneys General employed by each board varies a great deal depending on the board's size. The Board of Physicians, for example, has 13 investigators, while the Board of Pharmacy has just one. Some of the smaller boards share an investigator who spends most of his or her time out in the field investigating cases.

Within the Board of Physicians, cases involving issues of substandard care and over-utilization are referred for peer review to an outside contractor.

State Fiscal Effect: Legislative Services notes that the goals that the Secretary must set for all the boards, a group of boards, or a specific board regarding the timeliness of complaint resolution are not specified in the bill and are nonbinding. Further, the failure to meet the goals set by the Secretary may not be used as grounds for any hearing or appeal of any board action. Legislative Services advises that the boards can handle the requirements with existing resources since, under the bill, they do not have to meet any goals set by the Secretary. If the boards were required by regulations to actually *meet* specified goals, or were subject to penalties if they failed to meet them, expenditures would increase depending on the goals that are set and the boards' capacity to meet them.

Additional Information

Prior Introductions: HB 1275 of 2009, a similar bill, passed with amendments in the House, but received no further action from the Senate Education, Health, and Environmental Affairs Committee. Its cross file, SB 956, received a hearing in the same Senate committee, but no further action was taken.

Cross File: HB 114 (Delegate Nathan-Pulliam, *et al.*) - Health and Government Operations.

Information Source(s): Office of Administrative Hearings, Office of the Attorney General, Department of Health and Mental Hygiene, Department of Legislative Services

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