

Department of Legislative Services
Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 314

(Senator Pugh, *et al.*)

Education, Health, and Environmental Affairs

Health and Government Operations

Health Occupations - State Board of Physicians - Naturopathic Doctors

This bill requires individuals, by March 1, 2016, to be licensed to practice “naturopathic medicine” by the State Board of Physicians (MBP) and establishes a Naturopathic Medicine Advisory Committee within MBP. MBP must adopt regulations for the licensure and practice of naturopathic medicine and convene a workgroup to study the development of a naturopathic formulary and the routes of administration that may be used when administering natural medicines.

Fiscal Summary

State Effect: General fund revenues may increase by a minimal amount from criminal penalties. Special fund expenditures for MBP increase by at least \$58,600 in FY 2015 to establish a licensure program for naturopathic doctors. Special fund revenues increase significantly beginning in FY 2016 from new licensing fee revenues (assumed to be sufficient to cover estimated expenditures) and any civil fines assessed under the bill. Future year expenditures reflect annualization and inflation. Future year revenues reflect biennial renewal and growth in the number of licensees.

(in dollars)	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019
GF Revenue	\$0	-	-	-	-
SF Revenue	\$0	-	-	-	-
SF Expenditure	\$58,600	\$75,100	\$26,600	\$27,500	\$28,500
Net Effect	(\$58,600)	(\$75,100)	(\$26,600)	(\$27,500)	(\$28,500)

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

Local Effect: None.

Small Business Effect: Meaningful for naturopathic doctors who must be licensed under the bill.

Analysis

Bill Summary: “Naturopathic medicine” means the prevention, diagnosis, and treatment of human health conditions, injury, and disease using only patient education, naturopathic therapies, and therapeutic substances recognized by the Council of Naturopathic Medical Education. Naturopathic medicine includes counseling and the practice of the mechanical and material sciences of healing.

Naturopathic Doctor License

The bill specifies age, education, examination, and other requirements that an applicant has to meet to be licensed. An applicant must have a doctorate in naturopathic medicine from an approved naturopathic medical program and pass a specified competency-based licensing examination. To apply for a license, an applicant must, among other things, complete and submit to MBP a board-approved written attestation that (1) states that the applicant has a collaboration and consultation agreement with a licensed physician; (2) includes the name and license number of the physician; (3) states that the applicant will refer patients to and consult with physicians and other licensed or certified health care providers as needed; and (4) states that the applicant will require patients to sign a consent form that states that the applicant’s practice is limited as specified under the bill. An applicant must also inform the physician named in the attestation that the physician has been named.

The bill also specifies licensing procedures for biennial renewal, inactive status, and reinstatement, including continuing education requirements.

A licensed naturopathic doctor may:

- order and perform physical and laboratory examinations for diagnostic purposes;
- order and interpret the reports of diagnostic imaging studies;
- dispense or order natural medicines, dietary supplements, and nonprescription drugs that use various routes of administration;
- administer natural medicines of mineral, animal, or botanical origin;
- administer or perform hydrotherapy, naturopathic physical medicine, electromagnetic energy, and therapeutic exercise;
- provide health education and counseling; and
- perform naturopathic musculoskeletal mobilization.

A licensee may not prescribe, dispense, or administer any prescription drug; perform surgical procedures; practice or claim to practice as a medical doctor, physician, osteopath, dentist, podiatrist, or other specified health care professional; use general or

spinal anesthetics; administer ionizing radioactive substances for therapeutic purposes; perform chiropractic adjustments or manipulations unless the licensee is also a licensed chiropractor; or perform acupuncture unless the licensee is also a licensed acupuncturist.

The following individuals are exempt from the licensure requirement: (1) an individual employed by the United States to practice naturopathic medicine while practicing within the scope of employment; (2) a student enrolled in an approved naturopathic medical program; (3) an individual licensed in another state to practice naturopathic medicine and whose practice in this State is limited to examination, recommendation, or testimony in litigation; or (4) a naturopathic doctor licensed by and residing in another jurisdiction, if the naturopathic doctor is engaged in consultation and does not provide direct care.

MBP must set reasonable fees for the issuance and renewal of licenses and the other services MBP provides to naturopathic doctors.

The bill subjects the new licensure program to periodic review under the Maryland Program Evaluation Act, as with other health occupations boards, and aligns the program termination date with the termination dates for other allied health professionals regulated by MBP and the board itself – July 1, 2018. This subjects the program to review in 2016 – the first year of licensing naturopathic doctors.

Disciplinary Grounds and Reporting

The board must investigate any complaint filed with it and provide information on the status of complaints, upon request, to the person who made the complaint. The bill sets specific grounds for disciplinary action against a licensee or applicant. MBP, on the affirmative vote of a majority of a quorum of the board, may deny a license. A disciplinary panel, on the affirmative vote of a majority of a quorum of the disciplinary panel, may reprimand any licensee, place any licensee on probation, or suspend or revoke a license, after providing an opportunity for a hearing. Any person aggrieved by a final decision of MBP or a disciplinary panel may take a direct judicial appeal.

An order of MBP or a disciplinary panel may not be stayed pending judicial review. MBP may appeal from any decision that reverses or modifies an order of the board or a disciplinary panel.

An individual may not practice, attempt to practice, or offer to practice naturopathic medicine without a license. A violator is guilty of a felony and on conviction is subject to a fine of up to \$10,000, imprisonment for up to five years, or both. MBP may also levy a civil fine of up to \$50,000. MBP may issue a cease and desist order for practicing naturopathic medicine without a license or with an unauthorized person or supervising or aiding an unauthorized person in the practice of naturopathic medicine.

Licensed naturopathic doctors, licensed health care practitioners, health care facilities, and State agencies must file a written report with the board if the person has information that a licensee is or may be medically or legally incompetent, engaged in the unauthorized practice of naturopathic medicine, guilty of unprofessional conduct, or mentally or physically unable to engage safely in the practice of naturopathic medicine. A health care facility must promptly report to the board if a licensee voluntarily resigns, voluntarily limits his or her staff privileges, or fails to reapply for hospital privileges and such an action occurs while the licensee is under investigation for possible medical incompetence, unprofessional conduct, or mental or physical impairment.

Naturopathic Medicine Advisory Committee

The committee consists of five members appointed by the board: two naturopathic doctors; two practicing licensed physicians or doctors of osteopathy (including one who is a member of the board and one who has experience working with naturopathic doctors); and one consumer. Committee members serve staggered four-year terms and may not serve more than two consecutive full terms. The committee must elect a chair from among its member every two years. The committee must develop and recommend to the board (1) regulations; (2) procedures for licensure by reciprocity; (3) examination standards; (4) a code of ethics; and (5) continuing education requirements for license renewal. The committee must also evaluate the content of any clinical, practical, or residency requirement for licensure and provide any service or perform any function that is necessary to fulfill its purposes.

MBP must examine methods to identify physicians who are willing to collaborate with naturopathic doctors and provide information on the methods to the Naturopathic Medicine Advisory Committee.

Naturopathic Formulary Workgroup

Uncodified language requires the board to convene a workgroup to study the development of a naturopathic formulary in the State and the routes of administration that may be used. The workgroup must review the naturopathic formularies developed in other states and make recommendations regarding (1) the establishment of a naturopathic formulary, including the types of drugs, medicines, and devices to be included and the method by which they will be included and (2) the routes of administration that may be used. The workgroup must report its findings and recommendations to specified committees of the General Assembly by July 1, 2015. Nothing in the bill may be construed to authorize the establishment of a naturopathic formulary to regulate pharmaceuticals without further action by the General Assembly.

Current Law/Background: Naturopathic medicine is based on the belief that the human body has an innate healing ability. Naturopathic doctors teach their patients to use diet, exercise, lifestyle changes, and natural therapies to enhance their body's ability to ward off and combat disease. Naturopathic doctors craft treatment plans that blend modern medical science and traditional natural medical approaches to treat disease and restore health.

Seventeen states, the District of Columbia, and five Canadian provinces currently license naturopathic doctors. In these states, naturopathic doctors must graduate from an accredited four-year residential naturopathic medical school and pass the Naturopathic Physicians Licensing Examination Board (NPLEX) examination. In states that do not currently license naturopathic doctors, many individuals practicing naturopathic medicine hold a license in at least one of the states that do issue such licenses.

There are approximately 4,800 naturopathic practitioners nationwide. According to the Maryland Association of Naturopathic Physicians, 26 naturopathic doctors practice in Maryland. The Maryland Medical Practice Act sets forth the laws governing the licensure of physicians and defines the acts that constitute the practice of medicine.

The mission of MBP is to assure quality health care in Maryland through the efficient licensure and effective discipline of health providers under its jurisdiction, by protecting and educating clients/customers and stakeholders and enforcing the Maryland Medical Practice Act. The board has regulatory authority over physicians, physician assistants, radiographers, radiation therapists, nuclear medicine technologists, radiologist assistants, respiratory care practitioners, polysomnographic technologists, athletic trainers, and perfusionists.

Currently, the following six advisory committees assist MBP in its oversight role: the Physician Assistant Advisory Committee; the Radiation Therapy, Radiography, Nuclear Medicine Technology Advisory, and Radiology Assistance Committee; the Respiratory Care Professional Standards Committee; the Polysomnography Professional Standards Committee; the Athletic Trainer Advisory Committee; and the Perfusion Advisory Committee.

At the request of the Chairman of the House Health and Government Operations Committee, in 2013, MBP facilitated a workgroup to evaluate the need to regulate naturopathic practitioners in Maryland. The workgroup held a series of meetings with stakeholders and made the following recommendations:

- There are two reasonable alternatives for licensure: (1) establish “naturopathic practice,” within a defined scope of practice, as an exception to the practice of medicine; or (2) establish standards for oversight of naturopathic practitioners in

the Commercial Law Article and make any violations of those standards considered an unfair and deceptive trade practice.

- The scope of practice for naturopathic practitioners should be consistent with the core competency for graduates of identified, accredited naturopathic schools and readily assessed by the NPLEX examination.
- If licensed, naturopathic practitioners should be licensed by a Complementary Alternative Medicine Board or an independent Board of Naturopathic Medicine.

State Fiscal Effect: Special fund expenditures for MBP increase by \$58,563 in fiscal 2015, which accounts for the bill's October 1, 2014 effective date. This estimate reflects the cost of hiring one grade 14 administrative officer to help develop regulations, recruit members for and staff the advisory committee, and staff the required naturopathic formulary workgroup, as well as per diem and mileage reimbursement for five advisory committee members. (The board advises that, as for board members, it pays all advisory committee members a per diem and mileage reimbursement.) It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses. This position reflects similar staffing provided for the regulation of perfusionists by MBP. Per diem and mileage reimbursement are estimated at \$870 per meeting, with meetings occurring on a monthly basis for the first year, every other month in the second year, and quarterly thereafter.

Position	1
Salary and Fringe Benefits	\$46,888
Per Diems and Mileage Reimbursement	5,220
One-time Start-up Costs	4,370
Ongoing Operating Expenses	<u>2,085</u>
Total FY 2015 State Expenditures	\$58,563

MBP indicates that 1.5 full-time positions are necessary to staff the licensure program (a full-time administrative officer and a part-time (50%) assistant Attorney General); however, the Department of Legislative Services (DLS) respectfully disagrees. Once the licensure program is established and naturopathic doctors have been initially licensed in fiscal 2016, a part-time (50%) position should be sufficient to renew licenses and staff the advisory committee beginning in fiscal 2017. Thus, future year expenditures reflect a full salary (reduced to a 0.5 position in fiscal 2017) with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

As MBP is special funded, it must set *reasonable* fees for the issuance and renewal of licenses and other services it provides to naturopathic doctors. Licensure fees must be set so as to *approximate* the cost of maintaining the licensure program. This analysis assumes that MBP will set fees to ensure sufficient special fund revenues to approximately cover the cost of the licensure program. No special fund revenues are

anticipated in fiscal 2015, as MBP will need time to implement a new licensure program before accepting applications and licensure is not required until March 1, 2016. In fiscal 2016, it is assumed that the biennial license fee will be set to cover the cost of the licensure program for fiscal 2015 *and* 2016, as staff will be brought on to establish the licensure program in fiscal 2015.

There are currently approximately 26 naturopathic doctors in Maryland and between 8 and 10 additional licensees are anticipated annually. Based on the estimated expenditures stated above, initial biennial license fees may be as much as \$5,140 in fiscal 2016. As the number of licensees increases, biennial license fees could decline to approximately \$1,230 in fiscal 2017 and 2018, and \$970 beginning in fiscal 2019. Actual license fees and revenues will depend on the number of naturopathic doctors that seek licensure under the bill, as well as the actual costs incurred by MBP.

Additional Information

Prior Introductions: SB 783/HB 1029 of 2013 would have licensed naturopathic doctors under the State Board of Physicians. The bills received hearings in the Senate Education, Health, and Environmental Affairs and the House Health and Government Operations committees, respectively, but were both withdrawn.

Cross File: HB 402 (Delegate Oaks, *et al.*) - Health and Government Operations.

Information Source(s): *Report on the Proposed Regulation of Naturopathic Practitioners to the Maryland General Assembly*, Maryland Board of Physicians, October 31, 2013; American Association of Naturopathic Physicians; Maryland Association of Naturopathic Physicians; Department of Health and Mental Hygiene; Department of Legislative Services

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