

Department of Legislative Services
 Maryland General Assembly
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FISCAL AND POLICY NOTE
Revised

House Bill 574 (Delegate B. Robinson, *et al.*)
 Health and Government Operations Education, Health, and Environmental Affairs

State Board of Physicians - Physicians, Physician Assistants, and Allied Health Practitioners - Licensure Requirements

This bill requires applicants and licensees of the State Board of Physicians to submit to a criminal history records check (CHRC) as a qualification for licensure. The bill also creates new grounds for disciplinary action if a licensee fails to submit to a CHRC as required under the bill.

The bill takes effect July 1, 2015.

Fiscal Summary

State Effect: Special fund expenditures increase by a minimum of \$86,800 in FY 2016 for the State Board of Physicians to hire one full-time administrative officer to evaluate and investigate CHRCs and additional costs for subscription to the rap back service to monitor changes in CHRCs. The Governor’s proposed FY 2016 budget includes \$19,500 for rap back subscription costs. Future years reflect additional contractual personnel, inflation, and elimination of one-time costs. Revenues are not affected.

(in dollars)	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020
Revenues	\$0	\$0	\$0	\$0	\$0
SF Expenditure	86,800	221,300	451,900	326,400	93,600
Net Effect	(\$86,800)	(\$221,300)	(\$451,900)	(\$326,400)	(\$93,600)

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

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: Effective July 1, 2015, the board is prohibited from issuing a license to specified applicants if the required CHRC information has not been received. Effective October 1, 2016, the board is prohibited from renewing a license (as determined by board regulations) or reinstating a license of specified licensees if the required CHRC information has not been received.

On receipt of criminal history records information, the board must consider the following factors in determining whether to grant, renew, or reinstate a license:

- the age at which the crime was committed;
- the nature of the crime;
- the circumstances surrounding the crime;
- the length of time that has passed since the crime;
- subsequent work history;
- employment and character references; and
- other evidence that demonstrates whether the applicant poses a threat to public health or safety.

An applicant who is required to have a CHRC must apply to the Criminal Justice Information System (CJIS) for both a State and national CHRC. An applicant must submit two sets of fingerprints taken on the required forms, the State criminal history fee, and the processing fee required by the Federal Bureau of Investigation (FBI). CJIS must forward to the board and to the applicant the criminal history record information of the applicant. If information is reported to CJIS after the date of the initial CHRC, CJIS must provide the board and the individual with a revised printed statement of the individual's CHRC record. Information obtained from CJIS is confidential, may not be disseminated, and may be used only for licensing purposes. The subject of a CHRC may contest the contents of the printed statement issued by CJIS.

The bill applies to all licensees regulated by the board, including (1) physicians; (2) specified physicians who are otherwise exempt from State licensing requirements, including visiting out-of-state physicians; (3) osteopathic physicians; (4) respiratory care practitioners; (5) radiation therapists, radiographers, nuclear medicine technologists, and radiologist assistants; (6) polysomnographic technologists; (7) athletic trainers; (8) perfusionists; (9) naturopathic doctors; and (10) physician assistants.

Current Law/Background: Generally, applications for licensure, certification, or registration from health occupations boards include questions regarding past disciplinary actions, such as whether the individual has ever been denied an application, had any

disciplinary action taken against him or her by any state licensing or disciplinary board, or had any investigation or charge brought against him or her. Applications also typically ask if the individual has ever pled guilty, pled *nolo contendere*, been convicted, or received probation before judgment for any criminal act. Based on an applicant's responses, a board may investigate an applicant. If a board determines that an individual made incomplete or false statements about disciplinary or criminal actions, the board may pursue disciplinary action for fraudulently or deceptively obtaining or attempting to obtain a license, certificate, or registration.

As shown in **Exhibit 1**, nine health occupations boards currently require CHRCs; all but two upon initial application only. The State Board of Professional Counselors and Therapists requires subsequent CHRCs every 6 years upon renewal, while the State Board of Nursing requires subsequent CHRCs at least once every 12 years upon renewal. With the exception of registered pharmacy technicians, both a State and federal check are required for all noted professions.

In addition to licensure, certification, and registration by health occupations boards, some other individuals are required to obtain a CHRC. 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. The Maryland Department of Aging must adopt regulations that require a CHRC for an individual providing continuing-care-at-home services if the individual will have routine, direct access to a continuing care subscriber.

In the 2006 *Sunset Review: Update to the 2005 Evaluation of the State Board of Physicians*, the Department of Legislative Services (DLS) recommended that statute be amended to require the board to include national and State CHRCs in its initial application and licensure renewal process because data suggested a small number of physicians did not self-report criminal convictions as required on license application and renewal forms. However, the board disagreed with this recommendation, stating CHRCs would increase the cost of licensure and cause unnecessary delays in the licensing process. Subsequently, this recommendation was amended out of the board's sunset legislation, and the board currently does not require CHRCs in its initial licensing or license renewal processes. In practice, the board queries CJIS when an applicant has an affirmative response to certain character fitness questions, including discipline taken in other states, substance abuse, and mental or physical impairment. The board advises that, from fiscal 2007 through 2011, there was only one instance in which a CJIS query revealed that a licensee did not self-report a serious criminal conviction on the application.

Exhibit 1
Health Occupations Required to Obtain Criminal History Records Checks

<u>Board</u>	<u>Occupation(s)</u>
Chiropractic and Massage Therapy	Chiropractors ¹ Massage Therapists ¹ Massage Practitioners ¹
Morticians and Funeral Directors	Mortuary Transport Service Providers ²
Nursing	Registered Nurses ³ Licensed Practical Nurses ³ Certified Nursing Assistants ³ Electrologists ³
Pharmacy	Registered Pharmacy Technicians ⁴ Wholesale Pharmaceutical Distributors
Physical Therapy	Physical Therapists ¹ Physical Therapy Assistants ¹
Professional Counselors and Therapists	All applicants for licensure or certification ⁵
Examiners of Psychologists	Licensed Psychologists
Residential Child Care Professionals	Program Administrators Residential Child and Youth Care Practitioners ⁶
Social Work Examiners	Licensed Bachelor Social Workers ⁷ Licensed Certified Social Workers ⁷ Licensed Certified Social Workers-Clinical ⁷

¹ Per Chapter 598 of 2014.

² Certification began in 2013.

³ Subsequent criminal history records checks are required upon renewal at least once every 12 years.

⁴ State-only check required.

⁵ Per Chapter 348 of 2013; subsequent criminal history records checks are required every six years.

⁶ Certification is not required until October 1, 2015.

⁷ Per Chapter 391 of 2013.

In the 2011 *Sunset Review: State Board of Physicians and the Related Allied Health Advisory Committees*, DLS noted that (1) reviewing CHRCs for initial licensure and certification applications had proved to create a significant workload for the State Board of Nursing; (2) required CHRCs for pharmacy technicians under the State Board of Pharmacy had significantly delayed the registration of pharmacy technicians; and (3) there was likely a low level of board licensees with positive records. Based on this information, DLS advised that there was no need for the State Board of Physicians to require CHRCs at that time.

An October 2014 *Baltimore Sun* article reported that the board began developing a proposal to require CHRCs after it was revealed that a Maryland doctor had been practicing in the State for almost two decades despite having previously served a prison sentence for rape in Florida in 1987; the doctor served 4 years of a 10-year sentence and began practicing medicine in Maryland in 1996. The doctor was recently charged with sexually assaulting a patient in Maryland; charges were eventually dropped ahead of the scheduled September 2014 trial after the doctor agreed to surrender his license.

According to the Federation of State Medical Boards, in 37 of the 54 states and U.S. territories, state medical boards conduct criminal background checks as a condition of initial licensure. Maryland is 1 of only 17 states that do not require criminal background checks for physicians.

State Expenditures: Under the bill, new applicants for licensure are subject to the CHRC requirement in fiscal 2016, with renewal and reinstatement applicants subject to the requirement beginning in the second quarter of fiscal 2017, which is *after* physicians have renewed for that year. If a CHRC returns with a “positive” result (*e.g.*, criminal history information), the board must gather police records, court documents, and any other relevant information to evaluate the record. Previous analysis of the State Board of Nursing’s CHRC reports found that about 9% of CHRCs contain positive results necessitating further inquiry. Based on this information, **Exhibit 2** shows the estimated impact on the workload of the State Board of Physicians under the bill.

Exhibit 2
Estimated Impact on the State Board of Physicians
Fiscal 2016-2020

	<u>FY 2016</u>	<u>FY 2017</u>	<u>FY 2018</u>	<u>FY 2019</u>	<u>FY 2020</u>
New License Applications	1,500	1,500	1,500	1,500	1,500
Renewal License Applications	-	7,000	22,000	15,000	-
Total Applications Subject to CHRC Requirement	1,500	8,500	23,500	16,500	1,500
Estimated Positive CHRC Results Requiring Further Inquiry ¹	135	765	2,115	1,485	135
Total Applications Requiring Rap Back Subscription	1,500	8,500	23,500	16,500	1,500

CHRC: Criminal history records check

¹ Assumes that 9% of CHRCs are returned with positive results (*i.e.*, criminal history information).

Note: Does not reflect inactive licenses or reinstated licenses that are also subject to the CHRC requirement.

Source: State Board of Physicians; Department of Legislative Services

Based on this estimated workload, special fund expenditures increase by \$86,759 in fiscal 2016, which accounts for the bill's July 1, 2015 effective date. This estimate reflects the cost to hire one permanent, full-time administrative officer to receive and investigate CHRC results for 1,500 new applicants. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

In the second half of fiscal 2017, when renewal and reinstatement applicants are subject to CHRCs and most of the allied health professionals renew, two additional full-time contractual positions (one full-time administrative officer and one full-time computer support specialist) are required to assist with processing an anticipated 8,500 CHRC results and integrating the increased data into the board's information management system. The volume of CHRCs increases significantly in fiscal 2018 and 2019 when physicians are subject to the requirement of renewal (physicians are not subject to CHRCs for renewals in fiscal 2017 because they renew in September 2016, just before the requirement takes effect).

After all physician renewal applicants have received CHRCs in fiscal 2019, these contractual positions are no longer necessary to handle the ongoing workload of an estimated 1,500 applicants annually. Thus, the contractual positions terminate December 31, 2018.

The board advises that it will utilize a rap back process for all applicants and licensees. 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 board advises that it incurs additional expenditures for a rap back subscription for each applicant. The one-time cost to subscribe is \$13 per applicant or licensee. The Governor’s proposed fiscal 2016 budget includes \$19,500 to cover rap back subscription services for 1,500 new applicants.

	<u>FY 2016</u>	<u>FY 2017</u>	<u>FY 2018</u>	<u>FY 2019</u>	<u>FY 2020</u>
Positions					
Permanent	1				
Contractual		2		-2	
Salaries and Fringe Benefits	\$62,389	\$101,093	\$144,652	\$110,705	\$73,496
Rap Back Subscriptions	19,500	110,500	305,500	214,500	19,500
Ongoing Operating Expenses	<u>4,870</u>	<u>9,752</u>	<u>1,790</u>	<u>1,205</u>	<u>609</u>
Total State Expenditures	\$86,759	\$221,345	\$451,942	\$326,410	\$93,605

This estimate does not include any health insurance costs that could be incurred for specified contractual employees under the State’s implementation of the federal Patient Protection and Affordable Care Act.

Additional Comments: Each individual subject to a CHRC under the bill will be required to pay \$52.75 for a State and national CHRC including a \$20 fingerprinting fee, a \$14.75 FBI fee, and 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: SB 449 (Senator Conway) - Education, Health, and Environmental Affairs.

Information Source(s): *Baltimore Sun*, Federation of State Medical Boards, Department of Health and Mental Hygiene, Department of Public Safety and Correctional Services, Department of Legislative Services

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