

Department of Legislative Services
Maryland General Assembly
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FISCAL AND POLICY NOTE
Third Reader

House Bill 1420

(Delegate Cullison)

Health and Government Operations

Education, Health, and Environmental Affairs

State Board of Massage Therapy Examiners - Licensure, Registration, and Regulation

This bill separates the State Board of Chiropractic and Massage Therapy Examiners (BCMTE) into two boards – the State Board of Chiropractic Examiners and the State Board of Massage Therapy Examiners – and makes conforming changes. The bill provides for the membership and scope of the two boards, and it establishes separate special funds. However, the two boards continue to share existing BCMTE staff. The bill also specifies how a massage therapy and practitioner rehabilitation committee may be established and function, requires the new board to establish an advisory committee to study the scope of practice of massage therapy, and subjects the new board to the Maryland Program Evaluation Act.

Fiscal Summary

State Effect: As the two boards retain existing staff, total special fund expenditures for the Department of Health and Mental Hygiene (DHMH) are not significantly affected although they are now divided between two special funds rather than one. Even so, a minimal increase in special fund expenditures is anticipated beginning in FY 2017 for administrative expenses associated with division of the boards. Special fund revenues are only affected to the extent the boards modify their renewal processes and if fees must be adjusted to reflect individual board expenditures.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: The State Board of Massage Therapy Examiners and the State Board of Chiropractic Examiners may employ a staff in accordance with the budgets of the boards and must appoint an executive director, who serves at the pleasure of both boards.

State Board of Chiropractic Examiners: The State Board of Chiropractic Examiners is retained under Title 3 of the Health Occupations Article. There are seven board members: five must be licensed chiropractors and two must be consumer members.

State Board of Massage Therapy Examiners: The State Board of Massage Therapy Examiners is established under Title 6 of the Health Occupations Article, subject to evaluation and reestablishment provisions with a termination date of July 1, 2026.

There are seven board members: five must be licensed massage therapists and two must be consumer members. The Governor must appoint the licensed massage therapist members with the advice of the Secretary and the advice and consent of the Senate, from a list of names of qualified individuals submitted by an association that represents at least 250 licensed massage therapists in the State.

The board must keep a list of the name and address of each licensed massaged therapist and registered massage practitioner. Further, the board must establish an advisory committee to study the scope of practice of massage therapy and make recommendations regarding necessary statutory changes to reflect currently practice modalities.

As under current law, an applicant must submit to a criminal history records check. Under the bill, however, the board must consider several circumstances on receipt of the criminal history record information of an applicant when determining whether to grant a license or registration, including (1) the age at which the crime was committed; (2) the circumstances surrounding the crime; (3) when the crime was committed; (4) subsequent work history; (5) employment character and references; and (6) any other evidence that demonstrates whether the applicant poses a threat to the public health or safety.

The bill specifies that a license or registration may not be renewed for longer than a two-year term; however, the bill also authorizes renewal for a one-year term.

The bill establishes a new statutory reinstatement process for licensed massage therapists and registered massage practitioners. The board must reinstate a license or registration if the former licensee or registrant (1) applies for reinstatement within five years after the license or registration expires; (2) meets renewal requirements; and (3) pays the reinstatement fee set by the board. The board may not reinstate a license or registration if the individual fails to apply for reinstatement within five years. Instead, the individual

must reapply for a new license or registration in accordance with then-current requirements.

Massage Therapist and Practitioner Rehabilitation Committee: The bill specifies how a massage therapist and practitioner rehabilitation committee may be established and how it must function. Such a committee must evaluate and provide assistance to any licensed massage therapist, registered massage practitioner, or other regulated individuals in need of treatment and rehabilitation for alcoholism, drug abuse, chemical dependency, or other physical, emotional, or mental condition. Unless otherwise specified, the committee's files are not discoverable or admissible as evidence in any civil action arising out of matters that are being or have been reviewed and evaluated by the committee. There are civil protections for a person who participates in or cooperates with the committee. The rehabilitation committee may function solely for the board or jointly with a rehabilitation committee representing another board or boards.

Current Law/Background: BCMTE comprises 11 members: 6 licensed chiropractors; 3 licensed massage therapists; and 2 consumers. Chiropractors and massage therapists who serve on the board must have at least five consecutive years of experience. All members are appointed by the Governor with the advice of the Secretary of Health and Mental Hygiene and the advice and consent of the Senate. The massage therapist members must come from a list of qualified individuals submitted by the American Massage Therapy Association, Maryland Chapter.

There are two levels of chiropractic practice in the State: licensed chiropractors and chiropractic assistants. According to BCMTE, there are 824 licensed chiropractors and 685 chiropractic assistants in the State. The biennial renewal fee for licensed chiropractors is \$700. The biennial renewal fee for chiropractic assistants is \$250.

The regulation of massage therapy in Maryland is differentiated by the practice setting. If outside of a health care facility, it is deemed to be nontherapeutic massage, and the individual practicing must be a registered massage practitioner. Otherwise, a practitioner must be a licensed massage therapist. Because a massage therapy license offers more flexibility than a registration, most massage therapy practitioners are licensed massage therapists. According to BCMTE, there are 4,029 licensed massage therapists and registered massage practitioners in the State. The biennial renewal fee for both credentials is \$250.

Applicants for both chiropractic and massage therapist licenses and massage therapy registrations must submit to a criminal history records check. For massage therapy, there are no requirements for the board to consider any specific information or circumstances on receipt of the criminal history record information when determining whether to grant a

license or registration. However, there are requirements for the board to consider specific information prior to determining whether to grant or deny a chiropractic license.

Under statute, there is no reinstatement process for massage therapy. However, regulations authorize a massage therapy licensee or registrant to pay a late fee in addition to a renewal fee of \$200 within 30 days of the expiration of the license or registration. After 31 days, the individual must pay the renewal fee, the late fee, and an additional \$200 reinstatement fee. If a massage therapy licensee or registrant fails to apply for renewal within two years of the expiration date of the license or registration, the individual must reapply.

Statute provides for a chiropractor rehabilitation committee, similar to the massage therapist and practitioner rehabilitation committee under the bill, but there is no such committee for massage therapy under current law.

BCMTE is 1 of approximately 70 regulatory entities and activities currently subject to periodic evaluation under the Maryland Program Evaluation Act. The Act establishes a process better known as “sunset review” as most entities evaluated are also subject to termination, including BCMTE, which is scheduled to terminate July 1, 2022. The sunset review process traditionally begins with a preliminary evaluation conducted by the Department of Legislative Services on behalf of the Legislative Policy Committee (LPC), although a few entities are subject to direct full evaluation. LPC decides whether to waive an entity from further (or full) evaluation. If waived, legislation to reauthorize the entity typically is enacted. Otherwise, a full evaluation usually is undertaken the following year.

State Expenditures: The Governor’s proposed fiscal 2017 budget for BCMTE is \$1,154,341. DHMH advises that it plans to maintain current BCMTE staff and track and charge both boards separately according to time worked. Thus, there is no significant net fiscal impact on expenditures from the division of the boards. However, DHMH special fund expenditures increase – likely minimally – for various administrative expenses beginning in fiscal 2017, including additional board and new advisory committee meetings, expense reimbursement and per diem payments for three more board members, creation of separate cost codes for the two boards and tracking of personnel time spent on each board, creation and maintenance of two board websites, printing of additional letterhead and board materials, promulgation of regulations, and implementing staggered biennial renewal.

To the extent that DHMH must hire additional staff (particularly due to changes in renewal) or establish separate locations for the two boards, costs increase by a potentially significantly amount.

State Revenues: On a biennial basis, BCMTE has generally collected sufficient revenues to cover all expenditures allocated to it. The revenue stream, however, is slightly higher in odd-numbered fiscal years than in even-numbered fiscal years, while expenditures are

generally flat or increase minimally. This is due to the greater volume of massage therapists and massage therapy practitioners, who renew in even-numbered calendar years (by October 31); chiropractors and chiropractic assistants renew in odd-numbered calendar years (by September 30). BCMTE has had to use fund balance to cover costs in even-numbered years on a biennial basis and is anticipated to have a fund balance of at least \$315,576 at the beginning of fiscal 2017. Because chiropractors and chiropractic assistants will not be due to renew again until September 30, 2017 (fiscal 2018), it is assumed that the fund balance is largely due to renewals from that group of licensees and is used primarily to maintain operations for that board in fiscal 2017.

The new massage therapy board, however, will be renewing licenses and registrations in the first month of its existence, generating sufficient revenues to cover its costs. BCMTE advises that the new board plans to use the authority in the bill to renew approximately one-half of the massage therapist licenses and massage therapy practitioner registrations at that time for a two-year period and the other half for one year only (at one-half the current fee) – in order to generate a more even revenue stream in future years. In the first year of implementation, this staggering approach results in a one-time increase in revenues – of approximately \$251,800 for the new board. Otherwise, on a biennial basis, special fund revenues attributable to massage therapy are largely unaffected.

BCMTE further advises that the chiropractic board plans to similarly stagger its renewals beginning in fiscal 2018; this would also result in a one-time increase in revenues – of approximately \$187,000 for the chiropractic board. Otherwise, on a biennial basis, special fund revenues attributable to chiropractic are largely unaffected.

According to DHMH, once staggered renewal is fully implemented, the annual revenue from chiropractic licenses is anticipated to be approximately \$475,000 while the annual revenue from massage therapy is anticipated to be approximately \$671,000. To the extent additional funding is needed to maintain either board, fees will need to be increased.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Charles and Washington counties, Department of Health and Mental Hygiene, Department of Legislative Services

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