

Department of Legislative Services
 Maryland General Assembly
 2022 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 159

(Senator Kelley, *et al.*)

Education, Health, and Environmental Affairs

Health and Government Operations

Health Occupations - Authorized Prescribers - Financial Reporting

This bill requires each “authorized prescriber” who receives a financial gratuity or incentive from a pharmaceutical distributor or manufacturer to submit a financial disclosure document to the appropriate health occupations board within 30 days. The Maryland Board of Physicians (MBP) must post a link to the “open payments website” on each licensee’s individual profile on the MBP website and develop a nonpublic database of licensees with information collected on the open payments website. Each health occupations board that regulates an authorized prescriber (including MBP) must annually review (1) all financial gratuities and incentives that exceed a cumulative amount of \$5,000 per year and (2) the prescribing history and patterns of the authorized prescriber or physician regarding all patients (taking into consideration the authorized prescriber’s specialty) to determine whether to take action against the authorized prescriber or physician. Affected health occupations boards must adopt regulations to implement the bill. The bill must be construed to apply only prospectively.

Fiscal Summary

State Effect: Special fund expenditures increase by \$662,000 in FY 2023 for MBP and the State Board of Nursing (BON) for staff and database development. Future years reflect annualization and elimination of one-time costs. Special fund expenditures increase by an additional indeterminate amount (not shown below) beginning in FY 2023, as discussed below. Revenues are not affected.

(in dollars)	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027
Revenues	\$0	\$0	\$0	\$0	\$0
SF Expenditure	662,000	251,100	258,200	265,000	272,100
Net Effect	(\$662,000)	(\$251,100)	(\$258,200)	(\$265,000)	(\$272,100)

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

Local Effect: None.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: “Authorized prescriber” means any licensed dentist, podiatrist, advanced practice nurse with prescriptive authority, or any other individual authorized to prescribe prescription or nonprescription drugs or devices. “Authorized prescriber” does not include a licensed physician. “Financial gratuity or incentive” includes cash payment and specified agreements but does not include payments for food.

“Open payments website” means the website maintained by the U.S. Centers for Medicare and Medicaid Services on which information about financial relationships between health care providers and drug and device companies is published and that enables a user to search for health care providers.

Current Law: Under the Health Occupations Article, a health care practitioner (including physicians) may not refer a patient, or direct an employee or a person under contract with the health care practitioner to refer a patient, to a health care entity (1) in which the health care practitioner or the practitioner in combination with the practitioner’s immediate family owns a beneficial interest; (2) in which the practitioner’s immediate family owns a beneficial interest of 3% or greater; or (3) with which the health care practitioner, the practitioner’s immediate family, or the practitioner in combination with the practitioner’s immediate family has a compensation arrangement. This prohibition does not apply to a health care practitioner who refers specified in-office ancillary services or tests.

The federal Patient Protection and Affordable Care Act requires the federal Centers for Medicare and Medicaid Services (CMS) to collect information from certain manufacturers and group purchasing organizations of drugs, devices, biologicals, and medical supplies to report information about their financial relationships with physicians and teaching hospitals. CMS displays the data at <https://openpaymentsdata.cms.gov/>.

State Expenditures: Under the bill, each health occupations board that licenses authorized prescribers (Dental, Nursing, Pharmacy, MBP, and Podiatric) must receive financial disclosure forms and annually review (1) all financial gratuities and incentives exceeding a cumulative amount of \$5,000 per year and (2) the prescribing history and patterns of each authorized prescriber or physician who meets the specified threshold to determine whether to take action against the authorized prescriber or physician. MBP must develop a database of licensees with information collected on the open payments website and conduct the same annual review of financial gratuities and incentives. The two largest boards (MBP and

BON) regulate approximately 32,400 physicians, 4,000 physician assistants, and 7,000 advanced practice nurses with prescriptive authority. However, the number of financial disclosures the remaining affected boards (Dental, Pharmacy, and Podiatric) will receive cannot be reliably estimated without actual experience under the bill.

Maryland Board of Physicians

MBP advises that, in 2020, a total of 619 physicians met the \$5,000 cumulative thresholds for financial gratuities and incentives based on data from the open payments website. Thus, MBP special fund expenditures increase by at least \$129,182 in fiscal 2023, which accounts for the bill’s October 1, 2022 effective date. This estimate reflects the cost of hiring two full-time compliance analysts to review the prescribing history and patterns for all patients of the approximately 619 physicians whose disclosures meet the \$5,000 cumulative threshold. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions	2.0
Salaries and Fringe Benefits	\$114,496
Operating Expenses	<u>14,686</u>
Total FY 2023 MBP Expenditures	\$129,182

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

State Board of Nursing

BON advises that special fund expenditures increase by \$715,625 in fiscal 2023 to hire three full-time permanent employees and two full-time contractual employees and to develop a database (\$450,000 in fiscal 2023 only) to store financial disclosure information from approximately 7,000 advance practice nurses with prescriptive authority. The Department of Legislative Services (DLS) agrees that additional staff and information technology (IT) costs are necessary. However, based on the ratio of disclosures meeting the specified threshold for physicians (619 out of 32,4000 physician prescribers, or 1.9%), it is estimated BON will receive approximately 134 disclosures that meet the specified threshold from 7,000 advance practice nurses with prescriptive authority.

Thus, BON special fund expenditures increase by at least \$532,791 in fiscal 2023, which accounts for the bill’s October 1, 2022 effective date. This estimate reflects the cost of hiring one advance practice nurse program consultant to review the prescribing history and patterns for patients of approximately 134 advance practice nurses with prescriptive authority whose disclosures meet the \$5,000 cumulative threshold. It includes a salary,

fringe benefits, one-time start-up costs, ongoing operating expenses, and a one-time contractual expense of \$450,000 to develop a disclosures database.

Position	1.0
Salary and Fringe Benefits	\$75,448
Contractual IT Services	450,000
Operating Expenses	<u>7,343</u>
Total FY 2023 BON Expenditures	\$532,791

Future year expenditures reflect a full salary with annual increases and employee turnover as well as annual increases in ongoing operating expenses and elimination of one-time IT expenses.

Other Affected Health Occupations Boards

The State Board of Dental Examiners, the State Board of Pharmacy, and the State Board of Podiatric Examiners all regulate licensees with prescriptive authority. However, the number of dentists, pharmacists, and podiatrists required to file disclosures under the bill cannot be reliably estimated. Thus, the amount of any additional staff that may be required by these boards is indeterminate. Special fund expenditures for these boards increase by an indeterminate amount beginning in fiscal 2023 to develop databases to store disclosures.

Effect on Investigations for All Boards

To the extent additional investigations or disciplinary actions are generated by the boards due to the additional scrutiny of prescribing history and patterns of specified licensees required under the bill, special fund expenditures increase for the impacted boards for additional personnel and other administrative expenses.

Small Business Effect: Licensed prescribers must routinely submit financial disclosure forms to their respective licensing board. Certain prescribers and physicians may be subject to review of their prescribing history and patterns and potential action by their respective licensing board.

Additional Comments: MBP advises that the open payments database allows physician assistants, nurse practitioners, clinical nurse specialists, and other health care practitioners to report financial gratuities and incentives.

Additional Information

Prior Introductions: SB 430 of 2019, a similar bill, and its cross file, HB 696, were withdrawn.

Cross File: HB 462 (Delegate Pena-Melnyk, *et al.*) - Health and Government Operations.

Information Source(s): Maryland Department of Health; Department of Legislative Services

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