



Larry Hogan, Governor · Boyd K. Rutherford, Lt. Governor · Robert R. Neall, Secretary

Maryland Department of Health
Fiscal Year 2021 Operating Budget
Response to the Department of Legislative Services
MDH Health Professional Boards and Commissions Budget Analysis

Senate Budget and Taxation Committee
Health and Human Services Subcommittee
Chair Melony Griffith
January 24, 2020

House Appropriations Committee
Health and Social Services Subcommittee
Chair Kirill Reznik
January 29, 2020

Considering the surplus fund balances in the health occupation boards and related health care initiatives in the fiscal 2021 budget supported by general funds, the Department of Legislative Services (DLS) is recommending a BRFA action to authorize fund balance transfers of \$1 million in fiscal 2021 and 2022 from MBP to support operating expenditures for the Maryland Primary Care Program.

Response of the Maryland Board of Physicians:

The Board's fund balance is generated from the payment of licensure fees by 45,000 practitioner types including physicians, physician assistants, naturopathic doctors, athletic trainers, radiographers, polysomnographers, perfusionists and respiratory care practitioners. The Board is in the midst of implementing the first phase of a temporary fee reduction for all licensees who are renewing their license. The fee reduction will cost approximately \$1,347,242 for FY20 and FY21. Once completed, the Board will evaluate its financial position to determine if additional fee reductions can be made for the renewal fees of all licensees, and if they can be permanent. The planned second phase of fee reduction is for initial applicants, starting with physician licensure. The Board is considering reducing both the \$790 initial application fee for American Medical Schools Graduates and the \$890 initial application fee for Foreign Medical Graduates to \$650.

In accordance with Health Occ. §14-207(e)(1), the Board's "fund shall be used exclusively to cover the actual documented direct and indirect costs of fulfilling the statutory and regulatory duties of the Board." Licensure fees should not be transferred and used for other programmatic deficits, which occurs despite the dedicated nature of the Board's special funded budget.

The Board of Physicians respectfully disagrees with the DLS recommendation to:

“Transfer \$1,000,000 in fund balance from the Maryland Board of Physicians in both fiscal 2021 and 2022 to replace general funds supporting the Maryland Primary Care Program.”

The Board’s fund balance is unusually large at this time because of a more than \$4 million reserve for litigation that was recently resolved in the Board’s favor. However, another tort lawsuit is still pending and requires a reserve.

Previously, when the Board had to maintain the \$4 million reserve for pending litigation, operational projects were placed on hold. Now that the funds are available, the Board is proceeding with several initiatives including new contracts for the practitioner rehabilitation program (approximately \$3,000,000 beginning FY21), the peer review process (approximately \$3,500,000 beginning in FY21) and a supervising physicians program service for licensees under probation (approximately \$3,000,000 beginning FY21). The Board is also facing unknown expenses such as an assessment by the Interstate Medical Licensure Compact, relocation costs for the agency (estimated to be between \$500,000 and \$1,000,000) and pending legislation that seeks to transfer \$1,000,000 per year beginning in FY 22 to the MLARP Program.

Special funded agencies are expected to retain a portion of the fund balance for economic uncertainties. The recommended reserve for economic uncertainties is 20% and 30% of the agency's expenditures from the previous fiscal year based upon the size of the agency. The Board's FY19 expenditures totaled \$9,260,994.96; therefore, the reserve should be approximately \$2,800,000 of the fund balance.

It is frustrating that despite all the Board’s planning and hard work to be operationally nimble, fiscally responsible, retain reserves for uncertainties and utilize resources for upgrades for the benefit of Board licensees, that fund balances are appropriated to support programs unrelated to the Board’s mission.

DLS is further recommending a BRFA action to authorize fund balance transfers of \$750,000 in fiscal 2021 and 2022 from the State Board of Pharmacy to the Medical Care Programs Administration for the expansion of access to small pharmacies.

Response of the Maryland Board of Pharmacy:

The Maryland Board of Pharmacy concurs with the recommendation and is in support of the budget transfer of \$750,000 to the Medical Care Programs Administration for the expansion of access to small pharmacies.

The [Cannabis Commission] should comment on the progress of investigations as they pertain to diversity in the industry and any on-going efforts to improve participation by women and/or minorities.

Response from the Natalie M. LaPrade Maryland Medical Cannabis Commission (Commission):

License Application Process

The Commission is aware of media reports that raise concerns about the application review process, including the impartiality of the application evaluation. The Legislative Black Caucus of Maryland also sent an official request to the Commission on September 25, 2019, asking for a delay in the award of any Stage One Pre-Approval until the Commission completes “the verification process for all applicants to ensure that all companies are truthful in their disclosures about minority ownership, and their financial status.” While the Commission is confident that the application evaluation process and procedures developed by Morgan State University and Commission staff were comprehensive and fair, the Commission decided to engage an independent firm to complete an investigation into the (1) accuracy of certain material aspects of the highest ranking applications, and (2) impartiality of the application process.

The Commission issued two emergency requests for procurement (RFPs) for independent investigatory services to complete these fact-finding investigations. Several high-quality proposals were submitted to the Commission in response to each RFP. The Commission evaluated each proposal and made award recommendations to the Maryland Department of Health. The Commission anticipates that each investigation will be completed in March 2020, at which time the Commission will report the findings of each investigation to the General Assembly and the public.

A Montgomery County Circuit Court Judge issued a temporary restraining order that expired on October 17, 2019. Subsequently, the Commission may issue Stage One Pre-Approvals for grower and/or processor licenses, pending the results of the independent investigations. On December 5, 2019, the court also denied the Plaintiff, Remileaf LLC’s motion for a preliminary injunction, finding they were unlikely to succeed on the merits of the case. A hearing to consider the Commission’s motion to dismiss is scheduled for February 5, 2020.

On-going Efforts to Improve Participation by women and/or minorities

In 2019, the Commission hosted a series of educational outreach events to promote the medical cannabis program and licensing opportunities to small, minority, and women business owners and entrepreneurs. The Commission also awarded five grants – totaling \$225,000 – to business development and educational organizations to train small, minority, and women business owners and entrepreneurs on medical cannabis laws and regulations, as well as certain critical aspects involved in running a cannabis business. Combined, these events were attended by more than 700 small, minority, and women business owners and entrepreneurs. The Commission also adopted an “ancillary business registration,” pursuant to Health-General §13-3313, to authorize testing, security, transport, and waste disposal companies to possess cannabis and work with medical cannabis licensees. These business registrations have significantly lower fees than licensees (\$100 versus \$40,000) and require less capital. The Commission is currently working with small, minority, and women trade associations to promote ancillary business registrations and other job opportunities in the cannabis industry.

Currently, more than 60% of cannabis industry employees in Maryland are minorities and women, and more than 35% of all owners and investors in medical cannabis businesses in Maryland are minorities or women. These figures represent a significant increase from when the program first became operational in 2017.

The Board of Nursing should comment on their continued struggles in completing investigations in a timely manner and steps being made to improve investigative performance.

Response of the Maryland Board of Nursing:

Currently, the Board of Nursing (BON) has over 5,200 investigations in progress, and a total of 5 investigators (please note, full capacity is 10 investigators). On average, the BON receives 120 to 140 complaints per month and each investigator oversees 300 to 400 cases. Over the past six months, five investigators resigned and the Board lost two merit PINs during the last PIN review.

The following steps are being made to improve investigation performance:

1. BON is in the process of actively recruiting to fill open positions.
2. BON is restructuring the investigative department to improve the workflow.
3. BON is looking at more investigative and training resources based on the types of cases we are receiving.
4. BON is requesting to retrieve the two Merit PINs for the investigative team in order to achieve a better turnaround time.

MDH should comment on the status of this [Major IT] project [to assist in improving the licensing and investigation processes of the health occupation boards], the future of the funding for the project, and any other ongoing efforts to improve the collective performances of the health occupations boards.

Response of the Maryland Board of Nursing (BON):

The BON has been working directly with the Department of Information Technology (DoIT) to develop a strategic plan and approach to take advantage of the OneStop Portal DoIT developed. This portal provides one location where the citizens of Maryland can go for nursing information, as well as assisting in upgrading and modernizing our licensing systems. To date, DoIT and the BON have had several discussions regarding this matter, and it is the Board's position that these funds and more will be necessary to move forward with this project.