

SUNSET REVIEW: EVALUATION OF THE STATE BOARD OF VETERINARY MEDICAL EXAMINERS



DEPARTMENT OF LEGISLATIVE SERVICES DECEMBER 2019

Sunset Review: Evaluation of the State Board of Veterinary Medical Examiners

**Department of Legislative Services
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December 2019

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DEPARTMENT OF LEGISLATIVE SERVICES
OFFICE OF POLICY ANALYSIS
MARYLAND GENERAL ASSEMBLY

Victoria L. Gruber
Executive Director

Ryan Bishop
Director

December 31, 2019

The Honorable Thomas V. Mike Miller, Jr., President of the Senate
The Honorable Adrienne A. Jones, Speaker of the House of Delegates
Members of the General Assembly

Ladies and Gentlemen:

The Department of Legislative Services (DLS) has completed its evaluation of the State Board of Veterinary Medical Examiners as required by the Maryland Program Evaluation Act. This evaluation process is more commonly known as “sunset review” because the agencies subject to evaluation are usually subject to termination; typically, legislative action must be taken to reauthorize them. This report was prepared to assist the committees designated to review the board – the Senate Education, Health, and Environmental Affairs Committee and the House Environment and Transportation Committee – in making their recommendations to the full General Assembly. The board is scheduled to terminate on July 1, 2021.

As part of this evaluation, DLS collected and analyzed data from a wide array of sources. This work included interviewing board members, board staff, and professional association representatives. It also included reviewing statutes and regulations governing the practice of veterinary medicine in other states and soliciting feedback from pet owners.

Based on these findings, DLS makes a total of eight recommendations. First, DLS finds that the board is carrying out its duties to protect the public and animal health and welfare with the resources available to it. Therefore, DLS recommends that the board be reauthorized for 10 years, until July 1, 2031.

DLS also finds that the board has, in recent years, improved its processing of complaints and investigations alleging substandard care of animals. It is holding licensees and registrants more accountable by making greater use of formal disciplinary sanctions and fines. However, DLS recommends that the board be more transparent in reporting its disciplinary actions to the public and clarifying the standards of care to which it holds practitioners accountable. Similarly, DLS recommends that the Maryland Department of Agriculture (MDA), the Department of Budget and Management, and the board work together to set clear, appropriate, and results-oriented standards for the board’s performance in key areas.

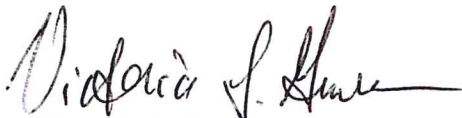
The Honorable Thomas V. Mike Miller, Jr., President of the Senate
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The board has made great strides in upgrading its information technology systems to both improve customer service and enhance internal processes. These improvements will continue to generate benefits but also present risks regarding the preservation of historical data maintained in other formats that may be relevant to the public. Thus, DLS recommends that the board prioritize the preservation and migration of historical data to its new systems and make it accessible to the public.

Finally, DLS found that, although the board generally has sufficient resources to carry out its duties, it faces the prospect of an increased workload due to a number of factors. The number of complaints, and resulting investigations, have spiked recently, creating a modest backlog. Statutory and regulatory changes are adding to the board's responsibility for inspecting animal care facilities. Meanwhile, recent fee reductions have generally reduced the revenue available to address these and other activities. Thus, DLS recommends that the board hire additional contractual staff to address the backlog and continue to monitor its revenue and expenditure patterns to determine whether a fee increase may be necessary in the near future.

We would like to acknowledge the cooperation and assistance provided by the board and MDA throughout the review process. The board was provided a draft copy of the report for factual review and comment prior to its publication. The board provided factual corrections and clarifications, which were incorporated into the published report, but elected not to submit written comments for inclusion as an appendix in the report.

Sincerely,



Victoria L. Gruber
Executive Director



Ryan Bishop
Director

VLG:RB/MCR/mlm
Enclosure

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Executive Summary

Pursuant to the Maryland Program Evaluation Act, the Department of Legislative Services (DLS) has evaluated the State Board of Veterinary Medical Examiners that is scheduled to terminate July 1, 2021. This report focuses on issues raised during the 2018 preliminary evaluation, including issues regarding the board's administrative workload, complaint handling process, finances, performance measures, and online services and database systems.

As part of this evaluation, DLS reviewed statutes, regulations, and legislative history; analyzed licensing, complaint, and fiscal data; attended two board meetings; reviewed board meeting minutes; interviewed board members and staff; reviewed comments from the public; and reviewed information provided by the American Association of State Veterinary Boards.

In general, DLS found that the board is carrying out its mission to protect the public and animal health and welfare with the resources available to it.

Recommendation 1: Statute should be amended to extend the termination date of the State Board of Veterinary Medical Examiners until July 1, 2031.

The 2018 preliminary evaluation concluded that a more in-depth examination of the board's complaint handling process was warranted. During the preliminary evaluation period, several consumers expressed concern that the board was not taking appropriate disciplinary action in

cases when it found that the standard of care had not been met.

For purposes of this report, DLS reviewed board-related data on disciplinary matters and found that formal actions and financial penalties have generally increased in recent years. DLS notes, however, that the disciplinary data maintained by the board is not organized in a manner that allows it to be used for accountability purposes, either internally or publicly. In order to conduct its analysis, DLS had to reconcile various information submittals from the board.

DLS also reviewed several of Maryland's health occupations boards to examine how disciplinary data is managed by those boards. DLS found that the Maryland Board of Physicians must report annually on a variety of disciplinary indicators including (1) the number of practitioners and complainants involved in the complaints; (2) the number of complaints still under investigation; (3) the number of complaints closed with no disciplinary action; (4) the number of complaints that resulted in informal or nonpublic action; (5) the number of complaints referred to the Office of the Attorney General for prosecutorial action; (6) the number of complaints resulting in denials of licensure, reprimands, probations, suspensions, and revocations; (7) the number of complaints forwarded to law enforcement for possible criminal prosecution; and (8) if other actions were taken, a detailed breakdown of the types of action.

Recommendation 2: To improve transparency and oversight of the board's disciplinary activities, statute should be

amended to require the board to report annually on relevant disciplinary data.

During the 2018 preliminary evaluation period, several members of the public also expressed concern regarding the board's interpretation of the standard of care applied in disciplinary cases, asserting that a more rigorous standard should be applied. For purposes of this report, DLS consulted with the board and the American Association of Veterinary State Boards and reviewed statutes/regulations of other states. DLS ultimately concluded that there does not appear to be a consensus on what constitutes the appropriate standard of care in veterinary medicine. Although the standard that is applied by the board is generally consistent with the standard applied in other jurisdictions, additional clarification may be warranted.

Recommendation 3: To provide reasonable guidance to veterinarians on the acceptable standard of care, as well as transparency to the public on the standard that will be applied in disciplinary proceedings, the board should clarify the standard of care under the Code of Maryland Regulations (COMAR 15.14.01.07) and include, at a minimum, language that reflects its interpretation of the standard.

Annually, in concert with the Governor's budget submission, the Department of Budget and Management (DBM) publishes Managing for Results (MFR) strategic plans outlining each agency's mission, vision, goals, objectives, and performance metrics.

According to DBM's *Managing for Results Guidebook*, agency objectives are intended to be standards for achievement that set specific and measurable targets toward

accomplishment of a goal and should be challenging but achievable. Further, objectives should specify a result or outcome that is attainable within a relatively short time period. In general, DLS found that the board-related MFR performance objectives and measures are not consistent with DBM's guidance, thus rendering these performance standards as incomplete, and possibly ineffective, in assessing the performance of the board.

Recommendation 4: The Maryland Department of Agriculture (MDA), in consultation with the board and DBM, should amend the MFR-related performance objectives to set clear, appropriate, and results-oriented standards for achieving board-related goals. A review of existing performance metrics, including those related to the resolution of complaints, should assess whether they are appropriate and feasible. Performance objectives should apply equally to all licensees and registrants of the board. Data reported by the board should directly measure whether the board is meeting its goals and objectives.

The board has recently initiated two major information technology (IT) upgrades. Although not fully complete, the board has implemented a new web portal to enhance online services to applicants, licensees, registrants, and consumers. In addition, the board is in the process of transitioning to a new IT system to manage board-related data. These new IT tools are already enhancing transparency and convenience for all stakeholders, with more advantages to come, but they also pose numerous risks and challenges, particularly with regard to the preservation of historical data stored in alternative digital formats or on paper.

Recommendation 5: To enhance transparency regarding disciplinary actions taken against licensees and registrants, the board should prioritize migrating historical disciplinary data to the new web portal and ensure that the disciplinary data is organized and searchable in a manner that is user friendly.

Recommendation 6: The board should continue to use, in all aspects of its work, relevant historical data, regardless of format, during the data migration process to ensure that the integrity and continuity of historical data is maintained.

The inspection responsibilities of the board have increased since the 2008 preliminary evaluation. Approximately 30 new limited-use facilities (which will be regulated in a manner similar to that for veterinary hospitals) are anticipated to be opened in the State. In addition, the board is taking measures to address the opioid epidemic by more closely reviewing the management of medications and controlled dangerous substances by veterinary hospitals, resulting in longer inspection times. Further, the board will be sharing inspectors with MDA to enforce the minimum standards of care for dogs and cats in certain animal shelters as required under Chapter 409 of 2017, requiring the shared inspectors to perform approximately 40 additional inspections of animal shelters.

Although the board's new complaint caseload has generally remained consistent, there was a significant increase in new cases in fiscal 2019. The board operates under a goal of making a determination on 90% of cases within 120 days after obtaining knowledge of an alleged violation of the

Veterinary Practice Act. The board is not meeting this goal, as the determination of cases within 120 days has decreased from 99% in fiscal 2014 to 8% in fiscal 2017.

At this time, the board is advertising for a new full-time contractual investigator to assist with addressing its complaint backlog.

Recommendation 7: The board should follow through with its effort to hire a contractual investigator, in whole or in part by using its surplus fund balance, to alleviate its complaint backlog and help meet its MFR goal related to complaint resolution (which may be modified based on the review undertaken as part of Recommendation 4). Additionally, the board should continue to monitor its workload to determine if additional staff needs to be hired in future years.

The board may be on a trajectory whereby its revenues may not be sufficient to cover its operating expenses, but a number of unknown variables make any such determination uncertain. First, it is unclear whether fee decreases implemented in fiscal 2017 will in time deplete the board's surplus. Second, it is too early to determine whether the spike in the number of complaints in fiscal 2019 could represent a new baseline for the annual number of investigations that the board is required to conduct.

In addition, the board has been charged with more duties in recent years, including the licensing and inspection of animal control facilities. Further, the board will need to license and inspect new limited-use facilities beginning in the near future. Finally, in light of the opioid epidemic, the board is taking more time in its inspections of veterinary

hospitals to more closely scrutinize the management of medications and controlled dangerous substances.

While the online services and data management upgrade will undoubtedly result in efficiencies for board activities, the upgrades will also result in revenue and expenditure uncertainties. For example, the new online complaint system could facilitate an increase in consumer complaints that the board needs to address. Also, the contract for the online services and data management upgrade calls for 3% of certain transaction fees performed electronically to be paid to the contractor, resulting in an annual cost to the board of at least \$20,000. Finally, as a result of the upgrade, the board will incur future software licensing, maintenance, and training costs of approximately \$26,400 annually.

Recommendation 8: The board should monitor its potentially volatile fund expenditures and revenues to determine whether any fee increases or decreases may be necessary in future years. Any future changes to the fee structure should target the constituencies that are responsible for the needed changes to the fee structure.

Chapter 1. Introduction and Background on the State Board of Veterinary Medical Examiners

Primary Recommendation:	Extend the termination date of the State Board of Veterinary Medical Examiners by 10 years to July 1, 2031.
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Date Established: 1894

Most Recent Prior Evaluation: Preliminary Evaluation, 2018

Primary recommendation: Full Evaluation

Composition: Seven members (five veterinarian members and two members who cannot be veterinarians)

Staff: Four full-time dedicated exclusively to the board (executive director, assistant director for field operations, licensing administrator, and administrative specialist)

Other personnel support the board (part-time assistant Attorney General dedicated to the board and two full-time inspectors shared with another board)

Regulated Entities: Veterinarians (2,853), veterinary hospitals (599), registered veterinary technicians (427), and animal control facilities (30)

Authorizing Statute: Title 2, Subtitle 3, Agriculture Article

Sunset Review Process and Primary Recommendation

This evaluation was undertaken under the auspices of the Maryland Program Evaluation Act (§ 8-401 *et seq.* of the State Government Article), which establishes a process better known as “sunset review” because most of the agencies subject to review are also subject to termination.

As part of the sunset review process, the State Board of Veterinary Medical Examiners underwent a preliminary evaluation in 2018. At the end of that evaluation, the Department of Legislative Services (DLS) concluded that there were unresolved questions about whether the board is fully achieving its purposes of protecting the public and animal health and welfare and recommended that further evaluation of the board be undertaken.

This full evaluation was undertaken to provide the General Assembly with information to use in making the determination about whether to reauthorize the board and for what period of time. This report focuses on issues identified in the 2018 preliminary evaluation, including issues regarding the board’s administrative workload, complaint handling process, finances, performance measures, and online services and database systems.

The board and related statutes will terminate July 1, 2021, unless reauthorized by the General Assembly. DLS finds that the board is carrying out its mission with the resources available to it. There is no doubt that the board should continue to exist, and a 10-year reauthorization is recommended. Additional recommendations are made throughout this report.

Recommendation 1: Statute should be amended to extend the termination date of the State Board of Veterinary Medical Examiners until July 1, 2031.

Research Activities

In conducting this evaluation of the board, DLS staff collected and analyzed information from a variety of sources. DLS research for this evaluation included:

- reviewing statutes and regulations governing the practice of veterinary medicine in Maryland and in other states;
- reviewing the licensing, complaint, and financial data of the board, including data provided by the board, data presented by the Maryland Department of Agriculture (MDA) in its annual reports, and data reported by MDA to the Department of Budget and Management;
- attending two board meetings, including closed sessions in which disciplinary matters were discussed, and reviewing minutes of past board meetings;
- interviewing current board members and staff;

- reviewing comments submitted by interested members of the public; and
- collecting and reviewing information provided by the American Association of State Veterinary Boards.

Report Organization

This report consists of five chapters. **Chapter 1** provides an overview of the sunset process, background on the board, and a summary of legislative changes affecting the board's regulatory purview since the 2008 preliminary evaluation. **Chapter 2** discusses complaint resolution and disciplinary issues. The appropriateness of the board's Managing for Results measures is discussed in **Chapter 3**, and the board's implementation of new database systems is discussed in **Chapter 4**. **Chapter 5** includes an assessment of the board's personnel and finances. **Appendix 1** contains draft legislation to implement the statutory recommendations contained in this report. The board reviewed a draft of this report and was invited to provide a written response to be included as an appendix. However, the board elected not to submit a written response. The board did provide clarifications and corrections of fact, and appropriate factual corrections and clarifications have been made throughout the document.

Entities Regulated by the Board

The board's stated mission is to protect the public and animal health and welfare through (1) effective licensure of veterinarians, veterinary technicians, and veterinary hospitals under its jurisdiction; (2) effective discipline of veterinarians, veterinary technicians, and operators of veterinary hospitals and animal control facilities under its jurisdiction, when warranted; and (3) adoption of reasonable standards for the practice of veterinary medicine in the State of Maryland.

The board regulates approximately 2,850 veterinarians, 425 registered veterinary technicians, 600 veterinary hospitals, and 30 animal control facilities. Veterinarians licensed to practice in Maryland and veterinary hospitals licensed to operate in the State must also register annually with the board. A person *may* register with the board as a veterinary technician; although such registration is optional, it does confer certain scope of practice benefits to veterinary technicians. Accordingly, the board is responsible for licensing and registering veterinarians, licensing and inspecting veterinary hospitals, registering veterinary technicians, and licensing animal control facilities to administer drugs needed to sedate and/or euthanize animals.

Board Structure

Housed within MDA's Office of Marketing, Animal Industries, and Consumer Services, the board shares inspection staff with another board and has 5.7 full-time equivalent positions

dedicated to its operations. Staff includes a full-time executive director and a part-time (70%) assistant Attorney General.¹

The board consists of seven members. Five are veterinarians licensed and registered in Maryland who are Maryland residents, are in good standing, are qualified, and have actively practiced veterinary medicine for at least five years. At least two of the five veterinarian members must have practices treating predominantly large animals. The remaining two members cannot be veterinarians. The Governor appoints, with the advice and consent of the Senate, all board members. Board members may not serve more than two successive five-year terms.

A Veterinary Technician Committee operates under the jurisdiction of the board with seven members appointed by the board, subject to approval by the Secretary of Agriculture. The committee is given prescribed duties under statute, including evaluating, examining, and determining the qualifications for applicants for registration as a veterinary technician; establishing continuing education requirements for registered veterinary technicians; defining the duties and responsibilities of registered veterinary technicians; and generally assisting the board in registering and regulating veterinary technicians. The committee's duties are at the discretion of the board.

The board is a special-funded entity with fees set to produce revenues that approximate the cost of maintaining its operations.

Major Legislative Changes Since the 2008 Preliminary Evaluation

As shown below in **Exhibit 1.1** the board's regulatory purview has been modified by the General Assembly several times since the 2008 preliminary evaluation. Changes have focused on practice of veterinary students and veterinary technicians under direct supervision, civil penalty authority, dispensing of compounded preparations, the board's authority with regard to mental and physical competency of practitioners, and duties for veterinarians and the board relating to reporting of animal cruelty.

¹ In 2019, the staff time allotted to the board for the part-time assistant Attorney General position was increased from 24 hours per week (60%) to 28 hours per week (70%).

Exhibit 1.1
Major Legislative Changes Since the 2008 Preliminary Evaluation

<u>Year</u>	<u>Chapter</u>	<u>Change</u>
2009	123	Extends the board's termination date by 10 years to July 1, 2021, and includes a related reporting requirement.
	20	Allows a veterinary student who has successfully completed three years of veterinary education at an institution approved by the board to practice veterinary medicine under the responsible direct supervision of a licensed veterinarian, and to have the same immunity from civil liability as a licensed veterinarian under the same circumstances.
	725	Authorizes the board to establish an annual continuing education requirement of at least 12 hours for veterinarians as a condition of license renewal.
2010	30	Modifies monetary civil penalty provisions to allow the board to (1) impose a penalty of up to \$5,000 for a first offense (in lieu of or in addition to suspension of a license, or in addition to revocation of the license) and (2) impose a penalty of up to \$10,000 for a second or subsequent offense (in addition to suspension or revocation of the license).
2011	56	Repeals a specific list of procedures registered veterinary technicians may perform under the responsible direct supervision of a veterinary practitioner and instead allows veterinary technicians to perform procedures in accordance with regulations adopted by the board.
	185	Authorizes the board to direct a veterinarian, veterinary practitioner, or applicant for a veterinary license to submit to a mental or physical examination under certain circumstances. Authorizes the board to refuse an application or to take specified disciplinary action against a licensee based on an inability to practice veterinary medicine competently due to a physical or mental disability.
2016	687/688	Authorize a licensed veterinarian to dispense compounded nonsterile preparations or compounded sterile preparations to a "nonfarm animal" (as defined by the board by regulation) under specified circumstances.
2017	409	Requires the Maryland Department of Agriculture (MDA) to adopt and enforce minimum standards of care for dogs and cats in animal shelters. (The board will share its inspectors with MDA to enforce the requirements of Chapter 409.)

<u>Year</u>	<u>Chapter</u>	<u>Change</u>
2017	417	Requires a veterinarian to report to the appropriate law enforcement or county animal control agency in a timely manner (1) any suspected animal cruelty or (2) any involvement in animal fighting by any animal treated by the veterinarian. The board may take disciplinary action against a veterinarian who fails to comply with the reporting requirement. The board must adopt regulations establishing (1) confidentiality procedures for protecting the identity of a veterinarian making a report; (2) confidentiality procedures for protecting the substance of a report and any associated records; and (3) conditions under which the substance of a report may be disclosed.

Source: Laws of Maryland

In addition, Chapter 267 of 2016 required, among other things, an animal shelter to establish and make publicly available by January 1, 2017, a specified written veterinary care protocol for dogs and cats and a specified written protocol for reclaiming animals from the shelter. In an effort to address concerns regarding regulatory oversight and enforcement under Chapter 267, Chapter 409 of 2017 required MDA, by January 1, 2018, to adopt specified minimum standards of care for dogs and cats in (1) certain animal control facilities and (2) private animal shelters that have received funding from the Spay/Neuter Fund (which funds programs that facilitate and promote the provision of spay and neuter services for cats and dogs) during the previous year.

Although the board advised MDA on the initial development of these regulations, the regulations promulgated by MDA did not establish any new inspection requirements specifically for the board. However, the board advises that, in addition to sharing inspectors with the Horse Industry Board, the board will also be sharing its inspectors with MDA to enforce the requirements under Chapter 409. The board further advises that, even though some animal shelters have a licensed veterinary hospital as part of their facility, an animal shelter's kennels are separate and distinct from the veterinary hospital and do not come under the board's regulatory purview. Overall, the board anticipates the MDA inspections under Chapter 409 will result in approximately 40 additional facility inspections.

Chapter 2. Complaint Resolution

One of the critical functions of the State Board of Veterinary Medical Examiners is to investigate complaints and take disciplinary action against licensees and registrants to enforce the laws and regulations governing the practice of veterinary medicine. The board's role in this area is part of its mission to protect consumers. The board advises that each case that it receives from a consumer involves a distraught or heartbroken pet owner. Pets hold an important role in society and are often treated as a member of the family. The U.S. Centers for Disease Control and Prevention advises that "studies have shown that the bond between people and their pets can increase fitness, lower stress, and bring happiness to their owners."

Complaint Workload Challenges

The 2018 preliminary evaluation of the board conducted by the Department of Legislative Services (DLS) found that the number of new cases handled by the board was relatively consistent from fiscal 2014 through 2018 with a low of 57 new cases in fiscal 2017 and a high of 72 new cases in fiscal 2015. However, as shown in **Exhibit 2.1**, in fiscal 2019, the board received 95 new complaints, which is 40% higher than the average number of cases received for the previous four-year period.

Exhibit 2.1
State Board of Veterinary Medical Examiners – Complaint Workload
Fiscal 2015-2019

	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>	<u>2019</u>
New Complaints ¹	72	71	57	71	95
Total Number of Complaints Closed ²	45	83	55	56	88
Average Number of Days to Close Case ³	166	178	256	183	328
Unresolved Cases as of August 2019	0	0	3	17	64

¹ Complaint data includes complaints initiated by both consumers and the board.

² The total number of complaints closed for each fiscal year includes all cases closed in that year, including those that were opened in prior years.

³ The average number of days to close a case for each fiscal year is calculated based on the total number of cases closed in that year.

Source: Department of Legislative Services' review of information provided by the State Board of Veterinary Medical Examiners

There is no statutory timeframe within which complaints must be resolved. However, under its Managing for Results goals, the Maryland Department of Agriculture has set an objective for the board to make a determination on 90% of cases within 120 days from obtaining knowledge of an alleged violation of the Veterinary Practice Act. This performance metric is not being achieved and is discussed in more detail under **Chapter 3**.

As reflected in Exhibit 2.1, the timeframe for complaint resolution can vary widely due to the particular facts of each case. During the most recent five-year period, of the cases that were closed by the board in each fiscal year, the average number of days to close a case varied from a low of approximately 5 months in fiscal 2015 to a high of almost 11 months in fiscal 2019. The board advises that cases involving legal counsel generally take longer to resolve than cases that do not involve legal counsel. In addition, the board further advises that it is receiving more complaints involving specialty care, which generally require expert opinions, resulting in longer complaint resolution times. Thus, depending on when complaints are filed and how long they take to resolve, complaints submitted in one fiscal year may not be resolved until a succeeding fiscal year. Overall, the board closed a total of 88 cases in fiscal 2019, with 32 of those cases arising in fiscal 2019, 33 in fiscal 2018, 20 in fiscal 2017, and 2 in fiscal 2016. Of the 84 cases that remained open as of June 2019, 3 were opened in fiscal 2017, 17 in fiscal 2018, and 64 in fiscal 2019.

Although the board has recently addressed a significant portion of its backlog from prior years, the board anticipates the backlog will be an ongoing challenge due to the number and complexity of cases received by the board recently, as well as the number of cases initiated by the board through more rigorous enforcement of its sanitation regulations. The more frequent use of formal actions (discussed below), which can often result in longer adjudication times, may also contribute to the persistent backlog.

Other societal trends may also contribute to an increase in the number of complaints and hence, the backlog. According to the American Pet Products Association, the number of dogs kept as pets in the United States has increased by approximately 50% from 1988 to 2018, and almost two-thirds of households owned a pet in 2018, compared with half of U.S. households in 1988. A growing pet population, an aging pet population, and the availability of more advanced treatment options all contribute to a rise in the provision of veterinary care services. As the number and sophistication of veterinary services increase, it is reasonable to assume that the number of complaints filed with the board will also increase. To address the current backlog and the anticipated increase in the number of complaints, the board advises that it is seeking to hire contractual staff to assist in complaint resolution. This is discussed further in **Chapter 5**.

Formal Charges and Imposition of Penalties Have Increased

The 2018 preliminary evaluation noted that several members of the public expressed concern that the board was not taking appropriate disciplinary action in cases when it found that the standard of care had not been met. The concerns expressed to the research team were that the board's standard of care was not strict enough and that the disciplinary actions in cases where the

standard of care was not met may not be sufficient to address and deter substandard care. This was one of the key findings identified for more in-depth examination in this full evaluation.

As shown in **Exhibit 2.2**, the board may take a variety of formal and informal actions to address disciplinary matters, including issuing civil penalties, probations, and suspensions (formal actions) and issuing letters of advice or letters of admonishment (informal actions). Both formal and informal actions become part of the licensee's or registrant's record. Except in rare instances when they are made confidential, formal actions are accessible by the public; informal actions are not accessible by the public. During the most recent five-year period, on average, the board has relied on informal actions to resolve complaints in roughly one-third of cases, ranging from a high of approximately 51.2% of the cases closed in fiscal 2015 and a low of approximately 27.6% of cases closed in fiscal 2019. However, data received by DLS from the board shows that formal actions and penalties have increased in recent years with corresponding decreases in the overall percentage of cases dismissed by the board. In fiscal 2018 and 2019, the board took public formal actions in 41.7% and 44.8%, respectively, of all dispositions, compared with only 15.7% and 16.7% in fiscal 2016 and 2017, respectively.

Financial penalties imposed and collected by the board have also increased in recent years. The board collected more than \$74,000 in penalties imposed against licensees in fiscal 2018 and 2019 combined, compared with a total of \$37,500 for fiscal 2015 through 2017. Penalties collected by the board are paid into the general fund of the State.

Recommendation 2: To improve transparency and oversight of the board's disciplinary activities, statute should be amended to require the board to report annually on relevant disciplinary data.

Exhibit 2.2
Complaint Resolution Activity
Fiscal 2015-2019

	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>	<u>2019</u>
Disposition of Resolved Complaints					
Dismissed					
Closed without Informal Action	11	39	28	12	23
Informal Letter of Advice	9	20	10	14	17
Informal Letter of Admonishment	12	10	5	7	7
Total Cases Dismissed	32	69	43	33	47
Formal Action (Public)					
Civil Penalty Final Order	7	5	3	13	23
Consent Agreement (CA) ¹	2	7	4	8	16
CA with Civil Penalty	1	7	4	8	16
CA with Suspension	0	3	2	3	3
CA with Probation	2	7	3	4	12
CA with Continuing Education	2	7	3	7	11
Censure	0	0	1	1	0
Surrender	0	1	0	3	0
Default Order	0	1	1	2	0
Total Formal Actions (Public)²	9	12	9	25	39
Formal Action (Confidential)					
Confidential Disposition Agreement	0	1	2	2	1
Disposition of Resolved Complaints (%)³					
Closed without Informal Action	26.8%	47.0%	51.9%	20.0%	26.4%
Informal Action	51.2%	36.1%	27.8%	35.0%	27.6%
Formal Action (Public)	22.0%	15.7%	16.7%	41.7%	44.8%
Formal Action (Confidential)	0%	1.2%	3.7%	3.3%	1.1%
Penalties Imposed and Collected	\$15,950	\$12,350	\$9,200	\$26,900	\$47,400

¹ The number of cases in each subcategory of consent agreements does not add to the total number of consent agreements because consent agreements can, and often do, include multiple penalties/requirements.

² The number of cases involving formal/public actions does not sum to the total number of cases resolved with formal/public action because some cases include multiple formal charges.

³ The percentages for the dispositions of resolved complaints were calculated based on the number of dispositions for which the Department of Legislative Services could verify the outcome. The percentage of cases resolved is based on 41 dispositions in fiscal 2015, 83 dispositions in fiscal 2016, 54 dispositions in fiscal 2017, 60 dispositions in fiscal 2018, and 87 dispositions in fiscal 2019. In addition, percentages may not sum to 100% due to rounding.

Source: Department of Legislative Services' review of information provided by the State Board of Veterinary Medical Examiners

Standard of Care

During the 2018 preliminary evaluation of the board, several members of the public contacted DLS to express concern regarding the board's interpretation of the standard of care applied in disciplinary cases, asserting that a higher standard should be applied when evaluating allegations of substandard care. This issue, too, was referred for further study in this full evaluation.

Many cases filed with the board allege substandard care. Board regulations require veterinarians to *conform to a minimum standard of care that is customary among veterinarians in the State* (specialists must conform to the minimum standards of care and treatment that are customary among specialists in a particular area of veterinary medicine). The board generally interprets the regulations to mean that a veterinarian's care must *be consistent with generally accepted professional standards of care, regardless of whether an actual injury has occurred*. Therefore, the board advises that it will not take formal disciplinary action against a veterinarian who could have avoided the complaint by undertaking a simple improvement in practice if that simple improvement is not a generally accepted professional practice.

During the 2019 evaluation period, DLS conducted research on the standard of care in veterinary medicine, including consulting with the board and American Association of Veterinary State Boards. The board advises that it is not aware of a uniform standard but describes the standard as generally requiring compliance with "minimal," "acceptable," or "reasonable" standards of care; these terms were not further defined by the board. DLS found similar references to the standard of care by other state boards. For example, on its website, the New Jersey Board of Veterinary Medical Examiners indicates that its purpose, in part, is "to ensure that veterinary medicine is performed in a manner consistent with acceptable medical and ethical standards"; however, this standard is not further explained in law or regulation. DLS found one state board that expressed a more specific standard of care. The Texas Board of Veterinary Medical Examiners requires licensees to "exercise the same degree of humane care, skill, and diligence in treating patients as are ordinarily used in the same or similar circumstances, including the type of practice, by average members of the veterinary medical profession in good standing in the locality or geographic community in which they practice, or in similar communities."

Based on this review, DLS concludes that there does not appear to be a consensus on what constitutes the appropriate standard of care in veterinary medicine. Accordingly, DLS finds that the standard of care applied by the board is, at a minimum, consistent with the standard used by its peers, but that additional clarification is warranted.

Recommendation 3: To provide reasonable guidance to veterinarians on the acceptable standard of care, as well as transparency to the public on the standard that will be applied in disciplinary proceedings, the board should clarify the standard of care under the Code of Maryland Regulations (COMAR 15.14.01.07) and include, at a minimum, language that reflects its interpretation of the standard.

Chapter 3. Performance Measures

Annually, in concert with the Governor's budget submission, the Department of Budget and Management (DBM) publishes Managing for Results (MFR) strategic plans outlining each agency's mission, vision, goals, objectives, and performance metrics. MFR is a strategic planning, performance measurement, and budgeting process that emphasizes use of resources to achieve measurable results, accountability, efficiency, and continuous improvement in State government programs.

One of the key MFR goals established by the Maryland Department of Agriculture (MDA) is to provide health, safety, and economic protection for Maryland consumers. With respect to the State Board of Veterinary Medical Examiners, MDA has set forth several objectives for achieving this goal. The stated objectives for the board are as follows (copied directly from MDA's MFR report):

- *to maintain the processing of completed registration applications, including all necessary supporting documents, and issue registrations within 30 days of receipt;*
- *100% of all veterinary hospitals licensed in the State will pass inspection annually; and*
- *for the board to make a determination on 90% of cases within 120 days from obtaining knowledge of an alleged violation of the Veterinary Practice Act.*

As shown in **Exhibit 3.1**, MDA currently reports the following board-related performance indicators to DBM: (1) the number of registrations issued for veterinarians; (2) the number of registrations issued for veterinary hospitals; (3) the percentage of hospitals passing inspection; and (4) the percentage of cases determined within 120 days.

Exhibit 3.1
Managing for Results Performance Measures
Fiscal 2015-2019

	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>	<u>2019</u> ¹
Registrations Issued for Veterinarians	2,602	2,667	2,871	2,871	2,870
Registrations Issued for Veterinary Hospitals ²	527	548	595	610	650
Percentage of Hospitals Passing Inspection	98.0%	97.0%	94.0%	95.0%	90.0%
Percentage of Cases Determined within 120 Days ³	50.0%	39.0%	8.0%	39.3%	35.0%

¹Data for fiscal 2019 is estimated. Data for fiscal 2018 is consistent with other numbers reported by the State Board of Veterinary Medical Examiners whereas data for fiscal 2015 through 2017 is slightly different.

²Although reported as “registrations,” this number represents the licenses issued to veterinary hospitals in each fiscal year.

³The percentage of cases “determined” within 120 days for each fiscal year is calculated based on the number of cases that have been investigated and presented to the board within 120 days; this percentage does not reflect the number of cases that have been resolved by the board within 120 days.

Source: Governor’s Budget Books

Board Performance Objectives and Metrics Should Be Revisited

According to DBM’s *Managing for Results Guidebook*, agency objectives are intended to be standards for achievement that set specific and measurable targets toward accomplishment of a goal and should be challenging but achievable. Further, objectives should specify a result or outcome that is attainable within a relatively short time period. Performance measures are quantifiable indicators that are used to assess whether an agency is achieving its objectives and should measure a result of some activity that is within the control of the agency. In general, the Department of Legislative Services (DLS) finds that the board-related MFR performance objectives and measures do not meet DBM guidance, thus rendering these performance standards as incomplete, and possibly ineffective, in measuring the performance of the board.

Registration Processing Target Not Sufficiently Challenging

As illustrated in **Exhibit 3.2**, the board is responsible for licensing and registering veterinarians, licensing veterinary hospitals, registering veterinary technicians, and licensing animal control facilities to administer drugs needed to sedate and/or euthanize animals. The first board-related performance objective presumably seeks to assess the board’s performance in handling its licensing and registration responsibilities, at least in regard to licensing and registering

veterinarians. However, this objective only refers to the processing of “registrations” and not “licenses,” which renders this metric incomplete. It is also unclear whether the metric applies only to registration (and licensing) of veterinarians or also to licensing or registration of veterinary technicians, animal hospitals, and animal shelters.

Exhibit 3.2
Licenses and Registrations Issued
Fiscal 2015-2019

	<u>FY 2015</u>	<u>FY 2016</u>	<u>FY 2017</u>	<u>FY 2018</u>	<u>FY 2019</u>
Veterinarians					
New Licenses	178	194	180	188	165
Registrations	2,776	2,812	2,871	2,871	2,853
Veterinary Technicians					
Registrations ¹	87	102	88	159	49
Veterinary Hospitals²					
New Licenses	43	41	36	23	52
Renewal Licenses	565	569	596	610	547
Animal Control Facilities					
Licenses	30	25	29	27	30

¹Renewed triennially.

²Hospital licenses are not transferable. The number of new licenses includes licenses issued to (1) new hospitals; (2) hospitals that have changed locations; (3) newly constructed hospitals built on the same property as an existing hospital; and (4) hospitals that have a change in ownership.

Note: The number of veterinary licenses and registrations and veterinary hospital licenses reflects information provided by the State Board of Veterinary Medical Examiners and, in some instances, differs from the numbers reported under Managing for Results performance measures reports.

Source: State Board of Veterinary Medical Examiners

With respect to processing times for licensing and registration of veterinarians, the board advises that routine applications for licenses to practice veterinary medicine in the State are generally processed within two weeks after all documentation is received and verified. After an application for licensure is approved by the board, a licensee may register online. Both initial registrations and annual registrations are processed within minutes of submission. Since the board more than achieves its objectives regarding processing time for registrations, DLS concludes that this objective is not sufficiently challenging. Moreover, the board does not, under current procedures, report the percentage of registrations that meet the 30-day standard.

Hospital Inspection Target Not Realistically Attainable

State law requires each veterinary hospital to be inspected every two years. During the 2018 preliminary evaluation, DLS found that the board strives to inspect each veterinary hospital at least once every 18 months. However, the hospital inspection performance objective specifies that “100% of *all* veterinary hospitals licensed in the State will pass inspection *annually*.” Since the language of the performance objective is not consistent with the statutory requirement that licensed veterinary hospitals be inspected every two years (not annually), DLS concludes that this performance objective is not worded or framed appropriately nor is it realistically attainable.

Although almost all licensed animal hospitals inspected in a given year do pass inspection, as shown in Exhibit 3.1, the reported MFR performance measures show that the hospital inspection passing rates fall just short of achieving a 100% passing rate for hospitals inspected each year. During the 2018 preliminary evaluation, the board’s executive director advised that the rate for passing inspection may decrease due to recent efforts to address the opioid epidemic. Inspections involve a close review of how veterinary hospitals manage medications and controlled dangerous substances, which may lead to an increase in the number of sanctions issued for poor recordkeeping and for violations of other drug management protocols. Whether or not a veterinary hospital is meeting the requirements of an inspection is not within the board’s control, and the statewide goal may, in some instances, create an incentive for an inspector to pass a hospital that is not meeting performance standards.

Complaint Handling Target Lacks Clarity

During the 2018 preliminary evaluation, the executive director advised that, under an MFR data request, the board is asked for the percentage of complaints that have been “reviewed” rather than “determined” within 120 days from obtaining knowledge of an alleged violation. This causes confusion over whether the data should reflect the number of cases closed or the number of cases that have been investigated and presented to the board. The board’s executive director further advises that it is not clear how data was calculated and reported in previous years but indicated that the previous data may be based on the amount of time before a complaint was investigated and presented to the board for a decision rather than how long the complaint took to resolve, which could extend for several weeks or months beyond presentation. However, this uncertainty could not be resolved due to the limitations of the board’s current database system.

As discussed in **Chapter 2**, the timeframe for resolving a complaint can vary widely, and the average amount of time for a complaint to be resolved takes far more time than 120 days, which suggests that this performance objective is not realistically attainable. Moreover, this objective does not provide a sufficient level of detail to understand whether the board is resolving complaints (including issuing final determinations) in a timely fashion.

Recommendation 4: MDA, in consultation with the board and DBM, should amend the MFR-related performance objectives to set clear, appropriate, and results-oriented standards for achieving board-related goals. A review of existing performance metrics,

including those related to the resolution of complaints, should assess whether they are appropriate and feasible. Performance objectives should apply equally to all licensees and registrants of the board. Data reported by the board should directly measure whether the board is meeting its goals and objectives.

Chapter 4. Online Services and Data Management System Upgrade

During fiscal 2018, the State Board of Veterinary Medical Examiners began developing a new web portal to enhance online services to applicants, licensees, registrants, and consumers. Also in fiscal 2018, the board initiated a significant upgrade to its internal data management system, which had not been upgraded in more than a decade. As these information technology (IT) upgrades were not fully implemented during the 2018 preliminary evaluation, a determination of the success of the upgrades was deferred to this full evaluation.

Online Services

By the end of fiscal 2018, current licensees and registrants were able to submit renewal applications electronically through the board's new web portal. Licensees and registrants are provided with individual accounts through which they must upload and verify continuing education requirements before submitting a renewal application to the board. The board advises that, as of June 2019, applications for initial veterinary licenses, veterinary hospital licenses, veterinary technician registrations, and animal control facilities licenses may also be submitted electronically through the web portal. The web portal also provides public access to information relating to current licensees and registrants. For veterinarians and registered veterinary technicians, the individual's name, license number, and license status is available, and for veterinary hospitals, the hospital's name, license number, license status, type of practice, and physical address of the veterinary hospital, as well as other relevant contact information, is available.

In addition to licensing and registration capabilities, the new web portal may be used by the public to submit complaints to the board. The board advises that the public will eventually be able to access information on disciplinary actions against licensees and registrants through the new portal, but, as of November 15, 2019, this feature is not yet available. The Department of Legislative Services (DLS) notes that some information regarding disciplinary actions against veterinarians is available on the board's website in an Excel spreadsheet. The spreadsheet includes information on disciplinary actions taken by the board since 2010 with web links to final orders issued beginning in fiscal 2017.

Recommendation 5: To enhance transparency regarding disciplinary actions taken against licensees and registrants, the board should prioritize migrating historical disciplinary data to the new web portal and ensure that the disciplinary data is organized and searchable in a manner that is user friendly.

Data Management System Upgrade

The board is taking steps to replace an antiquated data management system ("Oracle") to a new data management system ("Sales Force"). As of November 15, 2019, the board was still in

the process of migrating hospital inspection data and disciplinary data from Oracle to Sales Force. The board advises that the migration of data has been slowed, in part, due to technical difficulties with accessing information from the Oracle data management system. The board further advises that it is working to improve the organization of data within the new Sales Force data management system. While Sales Force is not yet fully functional, the board advises that inspectors have switched from a paper-based inspection report to an electronic report that is recorded directly into the Sales Force database.

DLS concludes that the IT upgrades implemented by the board have enhanced transparency and created significant administrative efficiencies in the board's operations. The migration of historical data from older systems and paper records will enhance the benefits of the new IT systems. However, the transition to new IT systems poses a risk to the preservation of critical historical data regarding disciplinary measures and public health and safety.

Recommendation 6: The board should continue to use, in all aspects of its work, relevant historical data, regardless of format, during the data migration process to ensure that the integrity and continuity of historical data is maintained.

Chapter 5. Sufficiency of Board Finances and Personnel

The State Board of Veterinary Medical Examiners is housed within the Maryland Department of Agriculture's (MDA) Office of Marketing, Animal Industries, and Consumer Services. Staff exclusively assigned to the board consists of an executive director, an assistant director for field operations (who is a full-time investigator)¹, a licensing administrator, an administrative specialist, and a part-time (70%) assistant Attorney General. In addition, 2 inspectors split their time evenly between the board and the Maryland Horse Industry Board (1 of whom assists with investigations); thus, authorized positions for the board total 5.7.

Board Fees Currently Cover Costs

As a special-funded entity, the fees charged by the board (for application, examination, licensing, and registration) are deposited into the State Board of Veterinary Medical Examiners Fund and used exclusively to carry out the board's responsibilities. Fees are set to produce revenues that approximate the cost of maintaining the board. The board last *raised* its fees in 2012. In 2015, Governor Lawrence J. Hogan, Jr. announced a plan to reduce or eliminate a number of fees across State government. As a result, the board reduced multiple fees, shown in **Exhibit 5.1**, including (1) the initial licensing fee for new or reinstated veterinarians; (2) the annual veterinarian registration renewal fee; (3) the triennial veterinary technician registration fee; and (4) the annual hospital license fee. These reductions were anticipated to decrease special fund revenues by \$214,325 annually beginning in fiscal 2017.

Exhibit 5.1

Fiscal 2017 Fee Changes by the State Board of Veterinary Medical Examiners

	<u>Fee Prior to July 1, 2016</u>	<u>Fee as of July 1, 2016</u>	<u>Fee Change</u>
Veterinarian – Initial License (issued 7/1 through 12/31)	\$215	\$150	-\$65
Veterinarian – Initial License (issued 1/1 through 6/30)	110	75	-35
Veterinarian – Annual Registration	215	150	-65
Veterinary Technician – Registration (triennial)	75	60	-15
Veterinary Hospital – Annual License	215	50	-65

¹New fee effective August 29, 2016.

Source: *Maryland Register*

¹ In November 2018, the board, in coordination with the Maryland Horse Industry Board, reclassified its lead investigator to assistant director to coordinate inspections and investigations of all field staff for efficiency purposes.

As shown in **Exhibit 5.2**, although revenues did decrease in fiscal 2017 and 2018, the impact of the fee reductions on the board's revenues was less significant than originally estimated. Exhibit 5.2 also shows that the board was operating with a healthy revenue surplus that allowed its fund balance to equal or exceed its expenditures in each of the two fiscal years prior to the fee reduction. While new revenues in fiscal 2017 did not cover the board's expenses that fiscal year, the expenditure gap was covered by its fund balance. In fiscal 2018, the board's revenues were once again higher than its expenditures. However, revenues fell short of expenditures again in fiscal 2019 due to one-time information technology (IT) costs, which significantly reduced the fund balance going forward.

Exhibit 5.2
Financial History of the State Board of Veterinary Medical Examiners
Fiscal 2014-2019

	<u>2014</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>	<u>2019</u>
Authorized Positions	6.6	5.6	5.6	5.6	5.6	5.6
Starting Fund Balance	N/A	\$465,465	\$637,322	\$817,765	\$741,852	\$841,082
Revenues Collected	\$795,612	\$810,310	\$826,633	\$656,045	\$769,430	\$822,742
Total Expenditures	\$596,671	\$638,453	\$646,189	\$731,958	\$670,200	\$994,622
Personnel Costs	441,748	435,063	414,523	493,907	481,525	535,797
Other Direct Costs	71,552	101,164	81,122	98,235	71,603	357,464
Indirect Costs	83,371	102,226	150,544	139,816	117,072	101,361
Revenue Surplus/(Gap)	\$198,941	\$171,857	\$180,444	(\$75,913)	\$99,230	(\$171,880)
Ending Fund Balance	\$465,465	\$637,322	\$817,765	\$741,852	\$841,082	\$669,202
Balance as a Percent of Expenditures	78%	100%	127%	101%	125%	67%

Note: Columns may not sum to total due to rounding. The board advises that \$250,000 of the fiscal 2018 ending fund balance was encumbered for the board's new database and online systems, which were implemented in fiscal 2019. Fiscal 2019 expenditures include one-time expenditures for those systems.

Source: Department of Legislative Services' review of information provided by the State Board of Veterinary Medical Examiners and the Comptroller's General Accounting Division and provided in the Governor's Budget Books.

The board has accumulated a significant fund balance since the 2008 preliminary evaluation, totaling \$841,082 at the end of fiscal 2018 (\$250,000 of which was encumbered for a new database and online services) and \$669,202 at the end of fiscal 2019. Except for fiscal 2018, board expenditures have increased each year since fiscal 2014, and revenues are generally lower

than in prior years due to the fee reductions that took effect in fiscal 2017. In light of these trends, it is possible that the board's annual revenues may eventually fall below its annual expenditures on a consistent basis. The accumulated fund balance is large enough to supplement revenue deficiencies in the immediate future. However, as the fund balance is spent down due to rising costs, the board may find it necessary to raise fees at some time in the near future.

Licensing and Registration Activity Can Be Handled with Current Resources

In order to maintain their license, licensed veterinarians must register annually with the board. As noted in **Chapter 4**, the applications associated with licensure and renewal registration can be completed online, which mitigates the impact on staffing. In fiscal 2019, the board issued 165 new veterinary licenses and 2,853 registrations. The number of hospital licenses issued in fiscal 2019 was 599. Veterinary technician registrations are renewed every three years; with 49 registrations issued in 2019, the board advises that there are approximately 427 registered veterinary technicians in Maryland.

Animal Control Facility Licensure Has Not Added to Workload

The 2008 preliminary evaluation noted that the board was beginning to license animal control facilities to administer sedation and perform euthanasia pursuant to Chapter 697 of 2008. The license replaced permits that the board had previously issued to animal control facilities to use sodium pentobarbital, a euthanasia drug. As there are only about 30 such animal control facilities, the board does not view issuing animal control facility licenses in place of the sodium pentobarbital permits as significantly affecting its administrative workload.

Veterinary Technician Registration Remains Limited

Similar to a finding in the 2008 preliminary evaluation, veterinary technician registration remains fairly limited in Maryland. As discussed in **Chapter 1**, although not required, a person may apply to the board to register as a veterinary technician. There are two options for making an application to the board:

- an applicant may submit a final transcript from a veterinary technician program approved by the American Veterinary Medical Association (AVMA) to the board (the only program located in the State is at the Essex Campus of the Community College of Baltimore County); **or**
- an applicant who has not graduated from an AVMA-approved veterinary technician program may submit a final transcript that shows the applicant holds an associate's degree or higher and satisfactory completion of specified course work (generally in the fields of biology, physiology, and chemistry), along with:

- proof of completion of 10,000 hours worked as a veterinary technician, with an affidavit showing hours and dates worked signed by a supervising veterinarian;
- a Maryland Technical Skill Set Assessment completed by a licensed veterinarian; and
- proof of completion of at least 24 hours of veterinary technician continuing education and emergency work experience as a veterinary technician.

All applicants must pass the Veterinary Technician National Exam, pay an application fee, and submit a completed application. A registered veterinary technician must renew the registration with the board every three years and is subject to continuing education requirements of 24 credit hours in the three years preceding renewal.

The procedures that may be performed by a registered veterinary technician are prescribed by the board by regulation. Specifically, under the responsible direct supervision of a licensed veterinarian, a registered veterinary technician may (1) provide anesthesia by injection into the muscle of an animal; (2) apply casts and splints; (3) perform simple dental extractions of loose teeth; (4) suture existing skin or gingival surgical incisions; (5) access a small stock of certain drugs that are kept under separate lock; (6) administer medication; and (7) perform other auxiliary or supportive assistance. Under the direct *visual* supervision of a veterinarian, a registered veterinary technician may administer anesthesia by inhalation or by intravenous injection. In addition, under emergency conditions a registered veterinary technician may provide supportive care and first aid and address specific conditions under written protocols established by the veterinarian. A registered veterinary technician is prohibited from (1) offering a diagnosis or prognosis for an animal; (2) prescribing drugs, medications, or appliances; (3) performing surgery; or (4) initiating treatment in nonemergency conditions without prior instruction by a veterinarian.

Because veterinary technicians can practice without registration, albeit with a more limited scope of practice, it is unclear whether the board will experience growth in such registrations. To date, there has not been noticeable growth in this area. However, to the extent that applicants for registration have not completed an AVMA-approved program, the process for reviewing and approving applications for registration is more involved and may, in the future, strain staff resources.

Expansion of Inspection Responsibilities Is Requiring More Staff Time

The board indicates that its inspection responsibilities have increased since the 2008 preliminary evaluation. The board advises that approximately 30 new limited-use facilities (which will replace 6 existing mobile units and will be regulated in a manner similar to that for veterinary hospitals) are anticipated to be opened in the State (the board just recently received license applications for 24 of these facilities). In addition, the board is taking measures to address the opioid epidemic by more closely reviewing the management of medications and controlled

dangerous substances by veterinary hospitals. This heightened scrutiny has increased the time that it takes to inspect veterinary hospitals. Further, as previously noted, the board will be sharing inspectors with MDA to enforce the minimum standards of care for dogs and cats in certain animal shelters as required under Chapter 409 of 2017. The board estimates that this legislation and its corresponding regulations will require the shared inspectors to perform approximately 40 additional inspections of animal shelters on behalf of MDA.

Timely Enforcement May Be Hampered by Many Factors, Including Staffing

As discussed in **Chapter 2**, although the board's new complaint caseload has generally remained consistent, there was a significant increase in new cases in fiscal 2019. Under its Managing for Results (MFR) strategic plan, the board has established the goal of making a determination on 90% of cases within 120 days after obtaining knowledge of an alleged violation of the Veterinary Practice Act (VPA). The board is not meeting this goal, as the determination of cases within 120 days has decreased from 99% in fiscal 2014 to 8% in fiscal 2017. Part of this problem may be attributable to staffing issues and part may be the result of inconsistent reporting standards (as discussed in **Chapter 3**).

Recent Staffing Constraints

With respect to board staffing issues, in April 2016, the board's longtime executive director retired. The board then had three executive directors between April 2016 and January 2017. Over this period, staffing responsibilities shifted, and a backlog of cases accrued, in part because of the growing complexity of the cases received by the board. In addition, the board's longtime assistant Attorney General retired in December 2017, which may have contributed to slower processing times due to a lack of experience with VPA and associated regulations. The board's staff has since stabilized.

Resolution Times Are Longer for Most Complaints

The board's complaint caseload backlog for the most part consists of active investigations or cases that either have been referred to the Attorney General for the filing of charges or are in the process of being dismissed. Active investigations usually consist of board-initiated complaints and consumer complaints. Board-initiated complaints are almost always the result of violations found during inspections. Consumer complaints often take longer to resolve, as they require more investigation and discovery and more often involve legal action. According to the executive director, as of November 2019, the board had a backlog of 85 complaints, 68 of which were in active investigation. Of the 68 active cases, 8 were board initiated.

Additional Temporary Staffing and Clarification of Standards Are Needed

At this time, the board is advertising for a new full-time contractual investigator. The job is described as inspecting and investigating complaints against veterinarians, veterinary hospitals,

animal control shelters, private shelters under contract to provide animal control services, and shelters that receive funding under the State's Spay and Neuter Grant Program for alleged violations of VPA. According to the executive director, it is anticipated that the contractual investigator will assist with addressing the complaint backlog. The board did not seek a permanent hire due to anticipated long-term revenue constraints and the unlikelihood that a permanent position would be approved by the Department of Budget and Management (DBM).

The board, MDA, and DBM may want to consider whether using a "complaint reviewed" standard is more reasonable and more feasible to obtain, while still satisfying the goals and responsibilities of the board under VPA.

Recommendation 7: The board should follow through with its effort to hire a contractual investigator, in whole or in part by using its surplus fund balance, to alleviate its complaint backlog and help meet its MFR goal related to complaint resolution (which may be modified based on the review undertaken as part of Recommendation 4). Additionally, the board should continue to monitor its workload to determine if additional staff needs to be hired in future years.

Higher Fees May Be Needed to Cover Ongoing and Future Expenditures

A number of unknown variables apply in determining future board revenues and expenses. First, it is unclear whether board revenues will continue to cover expenses, as was the case in fiscal 2018, or if this scenario was an anomaly and the fee decreases will in time deplete the surplus. One-time expenses for new IT systems caused the fund balance to decrease significantly, further diminishing the board's flexibility to cover future funding gaps. Second, it is unclear what future unforeseeable board duties may arise, as was the case when the board needed to take action to address the opioid epidemic. Third, the spike in complaints to 95 in fiscal 2019 could represent a new baseline for the annual number of investigations the board is required to conduct.

In addition, the board has been charged with more duties in recent years, including the licensing of animal control facilities to administer sedation and perform euthanasia and the inspection of these facilities. Further, the board will need to license and inspect more new limited-use facilities beginning in the near future. Finally, in light of the opioid epidemic, the board is taking more time in its inspections of veterinary hospitals to more closely scrutinize the management of medications and controlled dangerous substances.

While the online services and data management upgrade will undoubtedly result in efficiencies for board activities, the upgrades will also result in revenue and expenditure uncertainties. For example, the new online complaint system could facilitate an increase in consumer complaints the board needs to address. The board's executive director has stated that board-initiated cases generally are closed faster than cases generated by consumer complaints, as less time is needed for investigation and fewer board-initiated cases involve legal action. According to the board's executive director, although the online complaint system had not resulted

in a significant increase in consumer complaints as of September 2019, the number of complaints is expected to rise over time. The new system had only been in place for a few months at the time of this evaluation. In another example, the contract for the online services and data management upgrade calls for 3% of certain transaction fees performed electronically to be paid to the contractor, resulting in an annual cost to the board of at least \$20,000. Finally, as a result of the upgrade, the board will incur future annual software licensing, maintenance, and training costs of approximately \$26,400 (\$8,400 for licensing, \$15,000 for maintenance, and \$3,000 for third-party software).

Recommendation 8: The board should monitor its potentially volatile fund expenditures and revenues to determine whether any fee increases or decreases may be necessary in future years. Any future changes to the fee structure should target the constituencies that are responsible for the needed changes to the fee structure.

Appendix 1. Draft Legislation

Bill No.: _____
Requested: _____
Committee: _____

Drafted by: Flynn
Typed by: Fran
Stored – 12/13/19
Proofread by _____
Checked by _____

By: **Leave Blank**

A BILL ENTITLED

1 AN ACT concerning

2 **State Board of Veterinary Medical Examiners – Sunset Extension and Program**
3 **Evaluation**

4 FOR the purpose of continuing the State Board of Veterinary Medical Examiners in
5 accordance with the provisions of the Maryland Program Evaluation Act (sunset law)
6 by extending to a certain date the termination provisions relating to the statutory
7 and regulatory authority of the Board; requiring the Board to report to the Governor
8 and the General Assembly on or before a certain date each year; and generally
9 relating to the State Board of Veterinary Medical Examiners.

10 BY repealing and reenacting, without amendments,
11 Article – Agriculture
12 Section 2–301(a) and (b) and 2–302(a)
13 Annotated Code of Maryland
14 (2016 Replacement Volume and 2019 Supplement)

15 BY adding to
16 Article – Agriculture
17 Section 2–304(f)
18 Annotated Code of Maryland
19 (2016 Replacement Volume and 2019 Supplement)

BY repealing and reenacting, with amendments,
Article – Agriculture
Section 2–316
Annotated Code of Maryland
(2016 Replacement Volume and 2019 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
That the Laws of Maryland read as follows:

Article – Agriculture

2–301.

(a) In this subtitle the following words have the meanings indicated.

(b) “Board” means the State Board of Veterinary Medical Examiners.

2–302.

(a) There is a State Board of Veterinary Medical Examiners in the Department.

2–304.

**(F) ON OR BEFORE DECEMBER 31 EACH YEAR, THE BOARD SHALL REPORT
TO THE GOVERNOR AND, IN ACCORDANCE WITH § 2–1257 OF THE STATE
GOVERNMENT ARTICLE, THE GENERAL ASSEMBLY ON THE BOARD’S DISCIPLINARY
ACTIVITIES FOR THE PREVIOUS FISCAL YEAR.**

2–316.

The provisions of this subtitle creating the State Board of Veterinary Medical
Examiners and relating to the regulation of veterinarians and any regulations promulgated
under this subtitle are of no effect and may not be enforced after July 1, [2021] **2031**.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
October 1, 2020.