

SUNSET REVIEW: EVALUATION OF THE STATE BOARD OF NURSING



DEPARTMENT OF LEGISLATIVE SERVICES OCTOBER 2011

Sunset Review: Evaluation of the State Board of Nursing

**Department of Legislative Services
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DEPARTMENT OF LEGISLATIVE SERVICES
OFFICE OF POLICY ANALYSIS
MARYLAND GENERAL ASSEMBLY

Warren G. Deschenaux
Director

October 31, 2011

The Honorable Thomas V. Mike Miller, Jr.
The Honorable Michael E. Busch
Honorable Members of the General Assembly

Ladies and Gentlemen:

The Department of Legislative Services (DLS) has completed its evaluation of the State Board of Nursing (BON) 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 BON – the Senate Education, Health, and Environmental Affairs Committee and the House Health and Government Operations Committee – in making their recommendations to the full General Assembly. BON is scheduled to terminate on July 1, 2013.

DLS finds that there is continued need for BON to advance safe, quality nursing care in the State through licensure, certification, education, and accountability for public protection. BON’s workload has increased significantly since the last full sunset evaluation of the board in 2001, due to expanded licensure and certification responsibilities and the implementation of a criminal history records check requirement for nearly all of the individuals regulated by the board. However, staff resources have not increased at the same rate. DLS found that BON has responded relatively well to its expanded workload, but additional improvements need to be made to BON’s overall organization, particularly related to the collection of data, the backlog of certified medication technician applications, customer service, and public access to information.

In total, DLS offers 25 recommendations intended to make the board run more efficiently and improve the board’s relationship with the individuals it regulates and the general public. Since the continued regulation of nurses is essential to public protection, DLS recommends that BON’s termination date be extended by 10 years. Other recommendations require BON to contract with an independent entity to perform a personnel study; enhance its annual report to include specific licensing, certification, and complaint data; include a certified medication technician on the Nursing Assistant Advisory Committee; and report to the General Assembly on

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its implementation of sanctioning guidelines and on the other recommendations made in the evaluation report.

Several administrative recommendations are made related to customer service, cross-training and communication among personnel, BON's website design, the maintenance and organization of data and administrative materials, and the criminal history records check and complaint review processes. Draft legislation to implement the recommended statutory changes is included as an appendix to this report.

We would like to acknowledge the cooperation and assistance provided by BON and the Department of Health and Mental Hygiene throughout the review process. The department and BON were provided a draft copy of the report for factual review and comment prior to its publication; BON's written comments are included as an appendix to this report.

Sincerely,

Warren G. Deschenaux
Director

WGD/JBC/mlm

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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 Nursing (BON), which is scheduled to terminate July 1, 2013. DLS finds that there is a continued need for regulation of nursing by the State but has identified several areas in which the board could improve service to licensees, certificate holders, and the public. The 25 recommendations in this evaluation are summarized below.

Since fiscal 2005, the number of medication technicians certified by the board has more than doubled. While it is not surprising that BON has had difficulties in processing the high volume of applications, the continued delays have been significant and have required legislative intervention. Chapter 123 of 2011 requires the board to study and submit a report to the General Assembly by December 31, 2011, on the status of the online program for processing medication technician applications and staffing needs. DLS finds that the board should work with the provider community to develop policies for the more efficient certification of medication technicians by using the findings of this report.

Recommendation 1: The board should continue to prioritize certification of medication technicians; any statutory or regulatory changes related to the certification of medication technicians should be based on the findings of the report required by Chapter 123 of 2011, particularly the required staffing analysis. The board should also include

the provider community when developing policy related to the certification process and training requirements for medication technicians.

To improve the timeliness of the licensure process, the board has moved all registered nurse (RN), licensed practical nurse (LPN), certified nursing assistant (CNA), and certified medication technician (CMT) *renewal* applications online and is in the process of moving all RN, LPN, CNA, and CMT *initial* applications online, with a goal of having this process completed by early 2012. Additionally, biennial renewal for licensees begins January 1, 2013. While the implementation of online renewal and initial licensure capabilities and the movement to biennial licensure may require greater staff involvement during the implementation period, both processes should lead to increased staffing efficiencies in other areas, particularly among those individuals who handle paper applications.

Recommendation 2: The board should monitor any staffing efficiencies related to the online licensure process and the movement to biennial licensure and reallocate staff accordingly. The board should also use its customer service survey to monitor customer satisfaction with both processes.

Current law requires RNs, LPNs, CNAs, and electrologists to submit to national and State criminal history records checks (CHRCs) as part of the *initial* licensure and certification application and requires selected licensees and certificate holders to submit to CHRCs as a condition of *renewal*.

CMTs are not required to submit to CHRCs, although the application includes questions for self-disclosure of a criminal history. Board members and staff interviewed by DLS consistently stated that CHRCs are necessary to further the board's mission of advancing safe, quality nursing care. However, the board does not routinely track denials to determine whether and to what extent the CHRC requirement is furthering its mission.

Recommendation 3: The board should maintain annual data on the number of applicants for licensure as an RN or LPN and certification as a CNA that are denied licensure or certification based on positive CHRC results. Information should also be maintained on the number of applicants for certification as a CMT that are denied certification based on self-disclosure of a criminal history.

Board policies and procedures for processing CHRC results are designed to maintain confidentiality and require utilizing multiple staff throughout the process. However, many of these policies and procedures are not in writing. In order to ensure uniformity and consistency and promote transparency among licensees and certificate holders, any policies and procedures relating to the handling of positive CHRC results should be in writing and made available to BON staff and, as appropriate, the public.

Recommendation 4: The board should develop policy and procedure manuals on how the board handles positive CHRC results. These policies and procedures should be shared with board members and staff, and relevant policies should be published on the board's website.

Despite significant backlogs in the processing of CMT applications, the board

is considering seeking legislation during the 2012 session to extend the CHRC requirement to CMTs. However, such a requirement would have a significant impact on the workload of the board.

Recommendation 5: The board should delay seeking legislation to require CMTs to submit to CHRCs until the board has (1) implemented its online certification process for CMTs in a manner that results in the timely processing of certificates; (2) analyzed the effectiveness in protecting the public of the current criminal history self-disclosure policy for CMTs; (3) determined whether CHRCs are necessary in light of the self-disclosure policy; and (4) made any personnel changes relating to the certification of CMTs as a result of the personnel study recommended by this report. If and when legislation is introduced to require CMTs to submit to CHRCs, the board should consult with the provider and advocacy communities that employ and represent CMTs and take into consideration current statutory requirements related to CHRCs for adult dependent care programs.

Under Maryland law, applicants for licensure as an RN or LPN and applicants for certification as a CNA may be waived from the CHRC requirement if they have completed such a check through another state board of nursing within the previous five years. However, federal law prevents health occupations boards from sharing CHRC information with other states.

Recommendation 6: Statute should be amended to remove the authorization for applicants for licensure as an RN or LPN and applicants for certification as a CNA to be waived from a CHRC if they have completed such a check through another state board of nursing within the five

years preceding the date of their application. Such waivers cannot be granted because obtaining the criminal history records information from other states violates federal law.

DLS finds that the board has worked to streamline its complaint resolution process, which appears to have contributed to a reduced backlog of cases, particularly for CNAs and CMTs, and has enabled BON to hear cases in a more timely manner. However, DLS is concerned by the lack of written guidelines and the significant number of cases that continue to be carried over year after year while the number of new cases rises. One potential reason for delays in adjudicating complaints may be the inconsistent quality of investigative reports. In DLS interviews, board members stated that the non-nurse investigators often did not seek the type of information that would be sought from a nurse investigator because they lacked a nursing or medical perspective. Based on these findings, DLS makes the following recommendations to further improve the complaint resolution process:

Recommendation 7: The board, in consultation with the Office of the Attorney General, should develop a policy and procedure manual related to the complaint resolution process, including guidelines to be used by complaint review committees and in settlement conferences.

Recommendation 8: BON should continue to assess its complaint backlog and, as necessary, hold additional hearings.

Recommendation 9: Board members should meet with all investigative staff to discuss their expectations for investigations and should work with the

nurse investigators to develop training for non-nurse investigators in order to prevent future delays.

Chapters 533 and 534 of 2010 require all health occupations boards to adopt and report on use of sanctioning guidelines by December 2011. The board established a workgroup that has developed the guidelines, but the guidelines will not be implemented until after the December 2011 reporting deadline.

Recommendation 10: The board should report again to certain committees of the General Assembly on its implementation and use of sanctioning guidelines by December 1, 2012 (by which time the board is expected to have been using the guidelines for about one year).

The board has the capability to track significant data on current complaint activities. However, DLS observed that the board rarely runs data reports. Tracking complaint data would enable the board to measure the impact of its streamlined complaint resolution policies and monitor cases throughout the complaint resolution process.

Recommendation 11: The board should utilize its complaint tracking capabilities to develop, run, and maintain a catalog of complaint data reports on a regular basis and use the results to make staffing and automation changes to improve the overall complaint resolution process.

The board uses an automated call distribution (ACD) system to answer calls from the public. The board has increased the number of personnel answering phones, but complaints persist from both the public and board staff on wait times and the usefulness of the information provided by ACD operators.

Recommendation 12: BON should ensure that ACD operators have the appropriate training to handle frequently asked questions and that all staff who interact with the public are trained on phone etiquette for diffusing tense situations.

The board provides a considerable amount of information to the public and to the licensees and certificate holders it regulates through the board website. However, DLS found that the current organizational structure of the website can be difficult to navigate. Improvement of the website could reduce phone call volume and improve customer service.

Recommendation 13: The board should include all public board meetings under the “Public Meetings” link and should make the entire website easier to follow by placing everything needed for RNs under one link, LPNs under another link, and so on.

Current law requires the board to post final disciplinary orders online. The board has satisfied this requirement, but DLS found that the disciplinary information posted on the board’s website is inconsistent and misleading.

Recommendation 14: The board should ensure that posted disciplinary information is accurate, consistent, and up to date. In addition, the board should include descriptions of what information is available and directions as to how to access the information. The board should consider eliminating the “MBN Alert” and “Public Order” links and post disciplinary action by date with direct links to the public orders and include direct links to public orders under the “Look-up a Licensee” link.

The board posted a customer service survey on its website in July 2011 to measure the Managing for Results goal for the board to provide high quality customer service. The board could improve the effectiveness of the survey.

Recommendation 15: The board should add questions to the “Customer Satisfaction Survey” that are specific to the respondent’s interaction with BON staff. Further, the board should encourage more responses to the customer service survey by including prompts to complete the survey after the submission of an application or complaint and requiring ACD operators and staff to inform licensees, certificate holders, or the public about the online survey.

The board last published an online newsletter in September 2008 and instead now regularly posts updated board information on its website.

Recommendation 16: The board should reestablish an online newsletter as an opportunity to enhance communications between the board, its licensees and certificate holders, and the public.

BON is transitioning to a paperless application process and has indicated it needs additional employees to complete the transition. DLS finds that some of the information technology (IT) projects likely are one-time assignments and that after the application process becomes paperless the IT needs of the board may change.

Recommendation 17: Rather than request additional regular positions, the board should consider hiring contractual employees to complete the transition to a paperless application process.

The board provided DLS with anecdotal evidence of a need for additional positions but could not provide specific data to justify additional staff. The board does not regularly run data reports to assess and manage ongoing workloads. Additionally, the board continues to undergo significant changes that will impact its staffing needs, such as transition to a paperless application process, transition to biennial licensure renewal, and the anticipated requirement for CMTs to undergo CHRCs. The lack of data and ongoing changes that will affect staffing needs led DLS to a determination that further study is needed to determine appropriate distribution and levels of staff.

Recommendation 18: BON should contract with an independent entity to perform a personnel study to determine if and where additional staffing is needed. The study should be completed by October 1, 2013, and include an analysis of the board's workload in its major functions of licensure, certification, and complaint resolution and should consider at a minimum (1) the number of applications and complaints the board receives; (2) the number of employees assigned to each step of each function; and (3) the amount of time an application or complaint remains at each step of each function. The personnel study should include an analysis of the impact of the online processing of licenses and certificates and the movement to biennial renewal on staffing needs. Finally, the study should make recommendations relating to the most effective use of current staff including cross-training and reassignment.

Chapters 53 and 54 of 2010 changed the membership and qualifications for membership on the board. Currently, the board has four members with expired terms.

It is expected that the new appointments will increase representation on the board of the long-term care industry and, indirectly, CNAs and CMTs.

Recommendation 19: The board should work with the Department of Health and Mental Hygiene and the Governor's Appointments Office to reappoint or replace board members as required by Chapters 53 and 54 of 2010.

The Nursing Assistant Advisory Committee within the board was established to enable CNAs to have direct input into the certification and disciplinary processes. However, the advisory committee only meets every other month, several vacancies on the advisory committee need to be filled, and the advisory committee has not submitted an annual report to the board since 2001. Additionally, although the advisory committee has oversight of CMTs, the membership of the advisory committee does not include a CMT.

Recommendation 20: Statute should be amended to alter the membership of the Nursing Assistant Advisory Committee to include at least one CMT and to require the advisory committee to meet at least once a month. In addition, the board should fill vacancies on the advisory committee and adopt regulations clarifying the advisory committee's role.

DLS observed both a physical and collegial disconnect between the nursing staff and the nursing assistant staff that works on different floors. DLS finds that the lack of unity has reduced morale, which the board could improve by fostering a team atmosphere.

Recommendation 21: The board should reinstate its policy of holding monthly

staff meetings either with the entire staff or with division directors in order to enhance communication with and among board personnel.

With a few exceptions, staff members are not cross-trained to perform another staff member's job or function. Additionally, there are no comprehensive policy and procedure manuals that describe the responsibility of each function and the assignment of tasks within that function.

Recommendation 22: The board should conduct cross-training for employees, prepare more comprehensive documentation of board functions through the development of policy and procedure manuals, and update its organizational chart and job descriptions.

The board does not have sufficient technology to track the status of applications. Matching of CHRC results with applications is a manual process, subject to delays. Moreover, the processing of CMT applications has been fraught with significant delays.

Recommendation 23: The board should develop an automated system for tracking applications that can generate reports on how long applications have been in the licensing system and how long the applications remain at each step of the licensing process.

Current law requires the board to submit an annual report to the Secretary of Health and Mental Hygiene and the Governor. The board regulates the vast majority of health occupations professionals in the State and distribution of the annual report should be expanded to include the General Assembly. Additionally, the content of the annual report could be improved.

Recommendation 24: Statute should be amended to require the board to submit its annual report to the General Assembly, in addition to the Secretary of Health and Mental Hygiene and the Governor. The report should include specific data calculated on a fiscal-year basis in order to provide a clearer picture of the workload of the board.

The members and staff of the board work to fulfill the board's statutory duties. DLS has observed through interviews and board meetings that the board is capable and motivated to improve board operations. Throughout this report, DLS has recommended several administrative changes. These changes will make the board run more efficiently and improve the board's relationship with the individuals it regulates and the general public.

Recommendation 25: Legislation should be enacted to extend the termination date for the board by 10 years to July 1, 2023. Additionally, uncodified language should be adopted to require the board to report, by October 1, 2013, to certain committees of the General Assembly on the implementation status of nonstatutory recommendations made in this report. In particular, the board should report on how it has improved its use of data collection and tracking for the licensure, certification, and complaint resolution processes.

Chapter 1. Introduction

The Sunset Review Process

The Maryland Program Evaluation Act, enacted in 1978, requires the Department of Legislative Services (DLS) to periodically evaluate certain State agencies according to a revolving statutory schedule. Most of the agencies subject to review have a termination date in statute. The legislature must take action to reauthorize them or they will automatically terminate. The review process begins with a preliminary evaluation conducted on behalf of the Legislative Policy Committee (LPC). Based on the preliminary evaluation, LPC decides whether to waive an agency from further (or full) evaluation. If waived, legislation to reauthorize the agency typically is enacted. Otherwise, a full evaluation typically is undertaken the following year.

The State Board of Nursing (BON) is 1 of about 70 entities currently subject to evaluation. The board last underwent a full evaluation as part of sunset review in 2001. Based on those findings and recommendations, Chapter 165 of 2002 extended the board's termination date to July 1, 2013, and required the board to provide a report to certain committees of the General Assembly by October 1, 2002, on the implementation of report recommendations – including an action plan to reduce the backlog in complaints and a description of the efforts of the board to reduce operating costs through enhanced efficiency in the use of technology and personnel.

In advance of the board's 2013 termination date, a preliminary sunset evaluation was conducted by DLS in 2010 to assist LPC in determining whether to waive the board from further evaluation. The preliminary report found that the increased certification duties related to nursing assistants and medication technicians coupled with the requirement to conduct criminal history records checks (CHRCs) on all licensees and certified nursing assistants had significantly increased the workload of the board. DLS recommended that a full sunset evaluation be conducted to explore CHRCs, the complaint resolution process, personnel issues, and customer service issues. LPC concurred with the DLS recommendation. Thus, this evaluation is being undertaken to provide the General Assembly with additional information in making the determination about whether to reauthorize the board and for what period of time.

The State Board of Nursing

In Maryland, as in all other states, the District of Columbia, and five U.S. territories, a regulatory board oversees the practice of nursing. BON was created by the General Assembly in 1904. The mission of the board is to advance safe, quality care in Maryland through licensure, certification, education, and accountability for public protection. Along with 17 other health occupations boards, the board operates under the Office of the Secretary in the Department of Health and Mental Hygiene (DHMH). Although DHMH provides administrative and policy

support, board operations are managed directly by a staff that includes 75 authorized regular full-time equivalent and 0.51 contractual positions.

Board Composed Mostly of Registered Nurses

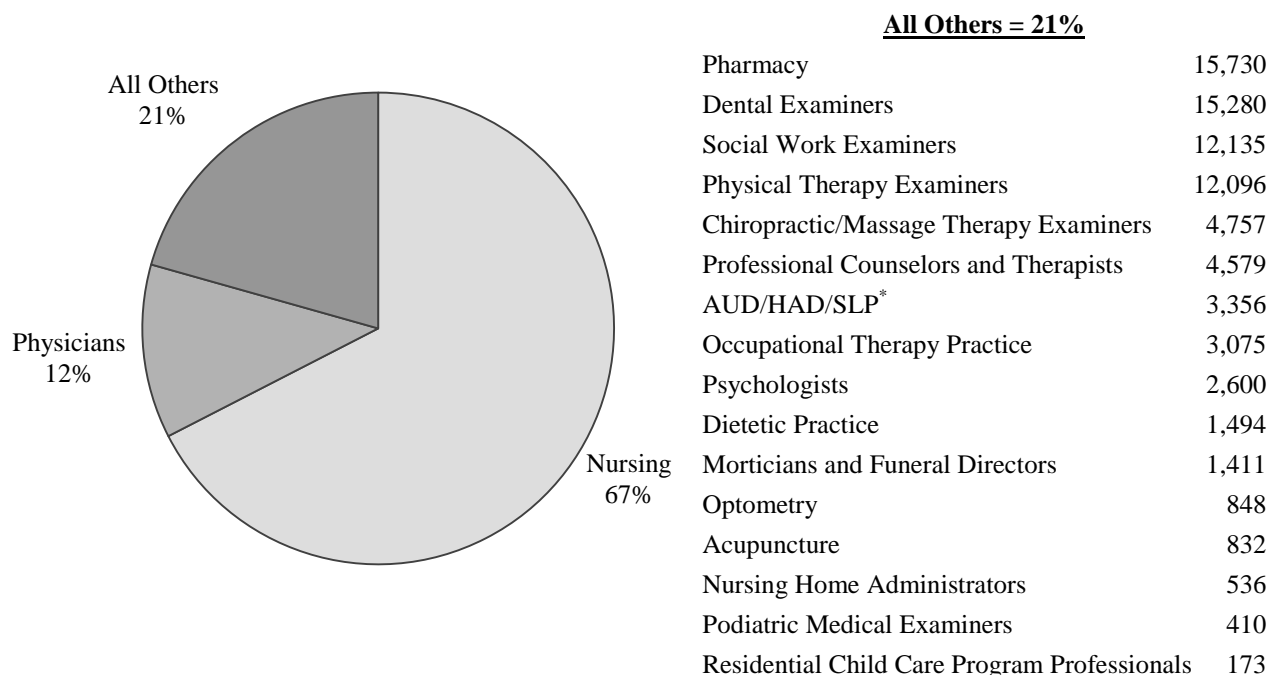
The board has 13 members: 8 registered nurses (RNs), 3 licensed practical nurses (LPNs), and 2 consumers. As outlined in statute, the RN members represent different segments of the profession, including a nurse administrator, nursing educators, nurse clinicians, and an advanced practice nurse. Members serve four-year terms. There are currently no vacancies on the board, but four members with expired terms are awaiting replacement. The issue of board appointments will be discussed in greater detail in **Chapter 6** of this report.

The board meets monthly and has several committees that meet on a monthly, quarterly, or as-needed basis. Each subcategory of licensee or certificate holder governed by the board is represented by a committee. In addition, the board forms workgroups to examine specific issues presented to the board. Recent examples of workgroups include the administration of intravenous moderate sedation by registered nurses and the licensure of distance learning schools. The board is supported by five rehabilitation committees, all of which meet on a monthly basis. The rehabilitation committees are statutorily created and provide an alternative to the board's disciplinary process for nurses and other regulated practitioners who are impaired by substance abuse or mental illness.

Board Workload Much Greater than Other Health Occupations Boards

The board is by far the largest of the health occupations boards in terms of the number of individuals who fall under its regulatory purview. As shown in **Exhibit 1.1**, the board oversees approximately two-thirds of all regulated health occupations professionals in the State, more than six times the number of individuals regulated by the second largest board, the State Board of Physicians. In fiscal 2010, the board issued about 265,000 licenses or certificates to RNs, LPNs, advanced practice nurses, nursing assistants (CNAs), medication technicians (CMTs), and electrologists – representing more than 259,000 individuals.

Exhibit 1.1
Active Licensees/Certificate Holders Governed by
Maryland Health Occupations Boards
Fiscal 2010



* Audiologists, Hearing Aid Dispensers, and Speech-Language Pathologists

Source: Department of Health and Mental Hygiene

Statutory Changes Affecting the Board Since the 2001 Sunset Review

Since the full evaluation in 2001, several statutory changes have affected board operations. As shown in **Exhibit 1.2**, legislation has focused on certification activities and scope of practice issues. The certification of medication technicians has expanded the board's regulatory authority. In addition, the requirement to add CHRCs as a condition of licensure or certification has increased the duties of the board significantly and will be discussed in more detail later in this report.

Exhibit 1.2
Major Legislative Changes Since the 2001 Sunset Review

<u>Year</u>	<u>Chapter</u>	<u>Change</u>
2002	165	Extends the termination date of the board by 10 years to July 1, 2013.
2003	422	Repeals the State Board of Electrologists and establishes the Electrology Practice Committee under the State Board of Nursing.
2004	455/456	Require the board to certify medication technicians.
2005	206	Authorizes the board to issue a temporary practice letter to a certified nurse practitioner or a certified nurse midwife subject to the approval of the State Board of Physicians. Authorizes the board to issue a temporary practice certificate to CNAs.
2006	49/482	Require electrologists to annually renew licenses with the board. Expand the grounds for disciplinary actions against electrologists to include failure to comply with continuing education requirements.
	390	Requires RNs, LPNs, selected nursing assistants, and electrologists to submit to a criminal history records check as part of the licensure and certification process.
	481	Authorizes the board to set standards for CNAs and CMTs. Alters the authority of the board's rehabilitation committee, the requirements of multistate licensing privileges, license renewal procedures, and the authority of the board to send an advisory letter to a licensee.
2007	544/545	Add an RN certified in an advanced practice nursing specialty as a member of the board.

<u>Year</u>	<u>Chapter</u>	<u>Change</u>
2007	598	<p>Requires an individual applying for reinstatement of a lapsed nursing license or other certificate to submit to a criminal history records check.</p> <p>Requires certificated individuals to present evidence of completion of 100 practice hours as a certified medicine aide or CMT within the two-year period prior to renewal.</p> <p>Requires certified medicine aides to complete continuing education.</p>
2008	232/233	<p>Authorize an RN certified as a nurse practitioner to make certain determinations regarding examination of a pregnant minor and “do not resuscitate” orders under specified circumstances and to provide vital data on birth, death, and other medical certificates.</p>
	301	<p>Authorizes the board to grant extensions of temporary licenses or temporary practice letters every 90 days for up to 12 months if the applicant does not meet specified practice requirements.</p>
	653	<p>Extends the date by which the board must check the criminal history records of existing certificate and license holders to July 2009.</p> <p>Authorizes the board to accept an alternative method other than fingerprints for a criminal history records check if two attempts to obtain legible fingerprints have failed.</p> <p>Authorizes the board to grant extensions of temporary licenses or temporary practice letters for 90 days pending receipt of criminal history records information.</p>
2010	53/54	<p>Alter the membership of the board and the process for board member nominations.</p>
	77/78	<p>Alter the scope of practice for nurse practitioners by requiring an approved attestation that the nurse practitioner has an agreement to collaborate and consult with a licensed physician and will refer to and consult with any other health care provider as needed.</p> <p>Repeal the requirement that the board and the State Board of Physicians jointly adopt regulations concerning the prescriptive authority of nurse practitioners.</p> <p>Require the board, in consultation with the State Board of Physicians, to develop a plan to implement the Acts.</p>

<u>Year</u>	<u>Chapter</u>	<u>Change</u>
2010	585/586	<p>Require applicants for licensure or certification to submit to an examination by a board-designated health care provider if the board has objective evidence that an applicant may cause harm to a patient.</p> <p>Establish biennial, staggered license renewal beginning in January 2013.</p> <p>Require the board to send renewal notices to licensees and certificate holders three months before a license expires.</p> <p>Require an additional criminal history records check of specified licensees and certificate holders every 12 years, rather than every 10 years.</p>
2011	107	<p>Specifies that each applicant for licensure as an electrologist must pass an examination approved by the board and a clinical examination approved by the board.</p> <p>Extends the term of an electrologist license from one to two years beginning January 1, 2013.</p>
	123	<p>Extends the time period from 90 to 180 days during which a medication technician graduate can practice without certification from the board (provision terminates April 12, 2013).</p>
	573	<p>Reauthorizes the Electrology Practice Committee until July 1, 2023.</p>

Source: Laws of Maryland

Research Activities

DLS utilized several standard research activities to complete the full evaluation of the board.

- **Literature and Document Reviews** – DLS reviewed several sources of literature on the regulation and practice of nursing, including literature from the National Council of State Boards of Nursing; the Annotated Code of Maryland; the Code of Maryland Regulations (COMAR); internal board documents such as administrative policies, annual reports, and board minutes; other evaluations of the organization and management of the board; complaint and licensing files; and the board's financial records.
- **Structured Interviews** – Numerous structured interviews were conducted to supplement the literature and document reviews including interviews with board members, board

staff, and staff from the Office of the Attorney General. Information was also sought from the Maryland Nurses Association, the Maryland Association of Community Services, the Nurse Practitioner Association of Maryland, and Mid-Atlantic Lifespan. The formal interviews focused on staff responsibilities and workload, board operations, licensure processes, disciplinary procedures, customer service, technological resources, and staff and management issues. Responses are not quoted or included as an appendix to this report but were used to identify potential problems with board management and operations, internal policies and procedures, and organizational structure.

- **Site Visits/Observation** – DLS also attended two meetings of the board, including disciplinary proceedings, to gain a better understanding of the issues confronting the board and the disciplinary process. In addition, DLS assessed BON's maintenance of files and office layout.
- **File Review** – DLS reviewed the board's licensing and complaint files to better understand how information is organized and tracked including information maintained in My License Office, the board's licensure software.

Report Organization

Chapter 1 of this report includes a review of the organization and history of BON and provides a review of statutory changes affecting the board since the 2001 sunset review. **Chapter 2** describes the board's licensing and certification functions, including a description of the online application and renewal process. **Chapter 3** outlines issues related to implementation of the CHRC requirement. **Chapter 4** describes the complaint resolution process. **Chapter 5** explores customer service issues. **Chapter 6** addresses resource and administrative issues including board finances, personnel issues, training of board staff, and documentation of board functions. **Chapter 7** summarizes and concludes the report.

As supplements to the report, two appendices are included. **Appendix 1** contains draft legislation to implement the statutory recommendations contained in this report. The board reviewed a draft of this report and provided the written comments included as **Appendix 2**. Appropriate factual corrections and clarifications have been made throughout the document; therefore, references in board comments may not reflect this published version of the report.

Chapter 2. Licensure and Certification

Licensure and Certification Are Central Functions of the Board

The State Board of Nursing (BON) licenses two levels of nurses: registered nurses (RNs) and licensed practical nurses (LPNs). RNs obtain an associate or bachelor's degree or graduate from a diploma program, while LPNs receive their education in trade or vocational schools and community colleges. Applicants for initial licensure as an LPN or RN must graduate from an approved nursing education program and pass the National Council of the State Boards of Nursing's licensure examination (NCLEX).

Nurses may also be licensed by endorsement. If an applicant is licensed in another state or country and meets requirements similar to those in Maryland, the applicant is eligible for licensure without taking NCLEX or other examinations outlined in board regulations. Applicants for licensure by endorsement must provide evidence of 1,000 hours of active nursing practice within the last five years or complete a board-approved refresher course.

The board certifies nursing assistants (CNAs) and medication technicians (CMTs). CMTs work under a delegating nurse and are trained to "pass" medications (distribute them to patients). CMTs are required to complete a board-approved medication training program. CNAs also work under a delegating nurse, but they work with individuals who are more medically complex. CNAs are required to complete a specified board-approved training program or course.

Applicants for licensure as an RN or LPN and applicants for certification as a nursing assistant must submit to a criminal history records check (CHRC). Statute currently waives this requirement for applicants who have completed a CHRC through another state board of nursing within the five years preceding the date of application for a Maryland license or certificate; however, as discussed in **Chapter 3** of this report, BON has not been able to grant such waivers in practice.

Board Also Certifies Seven Types of Advanced Practice Nurses

Some licensed RNs also receive a certification of advanced practice status in addition to their licensure as an RN. The board certifies seven types of advanced practice nurses: nurse anesthetists, nurse midwives, nurse practitioners, infusion therapy nurses, sexual assault forensic examiner (SAFE) nurses, workers' compensation medical case workers, and nurse psychotherapists. Each type of advanced practice certification has specific requirements set out in regulation.

Board Approves Educational Programs for Nurses

The board has statutory authority to approve educational programs for nurses. Additionally, the board approves programs for the certification of advanced practice nurses and CNAs. The approval process for an educational program requires a review of the curriculum, records of the school, interviews with staff and students, and an on-site inspection of the program. Standards for faculty education, training, and structure are also monitored by the board. The faculty of the nursing school must develop and implement an evaluation plan every three years, and all new programs must be approved by the board and the Maryland Higher Education Commission prior to admitting students.

Number of Certificate Holders Has Increased Substantially, Now Surpasses Number of Licensees

In addition to licensing RNs and LPNs and certifying advanced practice status, the board began certifying CNAs in fiscal 2000 and CMTs in fiscal 2004. As a result, the number of certificate holders has increased substantially. The number of CNAs has increased by 163% since fiscal 2005, while the number of CMTs has increased by 112%. As shown in **Exhibit 2.1**, the number of certificate holders now surpasses the number of licensees under the board's authority.

The number of RN licensees has increased from 61,148 in fiscal 2005 to 74,884 in fiscal 2011 (a 22% increase). Since fiscal 2008, the number of RN licensees has stabilized at around 74,000. Likewise, the number of LPN licensees has increased from 12,150 in fiscal 2005 to 14,605 in fiscal 2011 (a 20% increase) and has stabilized at around 15,000 licensees since fiscal 2008. The number of RNs who also hold advanced practice certifications has varied somewhat on an annual basis since fiscal 2005 but increased overall by 8% from fiscal 2005 to 2011. The steady increase in licensed nurses may provide good evidence that the shortage of nurses noted in the 2001 sunset evaluation is reversing. Also, as noted above, the number of CNAs and CMTs certified by the board since fiscal 2005 has increased significantly.

Exhibit 2.1
Licenses and Certifications Held
From the State Board of Nursing
Fiscal 2005-2012

<u>Type of Activity</u>	<u>FY 2005</u>	<u>FY 2006</u>	<u>FY 2007</u>	<u>FY 2008</u>	<u>FY 2009</u>	<u>FY 2010</u>	<u>FY 2011</u>	<u>Estimated FY 2012</u>
Licenses/Certificate Holders								
RNs	61,148	58,216	55,860	73,818	74,683	74,104	74,884	75,000
LPNs	12,150	10,607	11,063	15,283	14,820	15,283	14,605	15,500
CNAs	43,500	48,623	47,598	81,391	98,869	107,112	114,527	115,000
CMTs	32,618	40,721	15,643	20,384	57,354	62,744	69,246	69,000
Electrologists	110	110	108	111	98	85	74	60
Additional Workload Measures Related to Nurses								
Advanced Practice Certifications Held by RNs	4,252	3,127	3,831	4,003	5,912	4,932	4,598	5,000
Licensure by Endorsement	1,741	2,704	2,091	2,456	2,599	2,812	2,696	2,600
New Licensee/Exams	2,516	2,942	3,095	3,095	2,881	3,240	3,485	3,300

Notes: Though licensed by the board, a separate sunset evaluation of the Electrology Practice Committee was conducted in 2010. The number of electrologists licensed annually is included in this chart as an indicator of the board's workload. Licenses and certifications associated with nurses are currently issued annually whereas certifications for nursing assistants and medication technicians are issued biennially.

Source: State Board of Nursing

Volume for Certification of Medication Technicians Is High

Although medication technicians are certified for two-year periods, the certification numbers shown above reflect total certificates held each year, rather than the number of certificates issued each year. Regardless, Exhibit 2.1 clearly shows the growth trend for CMTs; since fiscal 2005, the number of medication technicians certified by the board has increased by 112%, with 69,246 certificate holders in fiscal 2011. However, the board advises that another 20,962 applications made in fiscal 2010 and 2011 were still pending as of October 20, 2011.

Applicants for a medication technician certificate must be of good moral character, be at least 18 years old, successfully complete an approved course in medication administration or a

portion of an approved nursing education program, and submit a specified application and fee to the board. Applicants may not have committed any act or omission that would be grounds for discipline or denial of certification nor have a record of abuse, negligence, misappropriation of a resident's property, or any disciplinary action taken or pending in another jurisdiction.

Training Requirements for CMTs May Be Too Onerous

Providers who employ medication technicians have expressed concerns about the training requirements. In 2010, the board established a workgroup to examine training requirements for medication technicians; the workgroup made several recommendations that were approved by the board. Providers stated that they were not included in the workgroup and that the training requirements recommended are too onerous on CMTs. As a result, the board has posted on its website a notice of a public hearing on the CMT training issue to be held in the fall of 2011. An additional area of concern for providers is the potential impact of requiring a criminal history records check as a requirement for certification as a CMT, which will be discussed in more detail in Chapter 3 of this report.

Delays in Processing Certifications Have Been Dramatic but Are Now Being Addressed

Medication technicians are often employed by nursing homes, assisted living facilities, and developmental disability providers, and they make an average of \$9 to \$10 an hour. The provider community repeatedly expresses concerns regarding the high turnover rate of CMTs due to their low wages and the impact that additional regulation has on individuals who can find higher paid employment in other fields. The provider community has also noted problems with delays in the board's processing of certificates. Providers testified before the General Assembly that they spent a great deal of time working through the delays, lost paperwork, and bureaucratic challenges presented by the board, and that such challenges often result in supervisors spending hours on the phone trying to get answers about the certification status of CMTs.

Based on these concerns, Chapter 653 of 2008 authorized medication technicians to practice for no more than 90 days from the date of completion of a medication technician training program. With continued provider complaints about the certification process, both the board and providers supported Chapter 123 of 2011, which extended the 90-day timeframe to 180 days. The board has attributed the delays in processing applications to an unanticipated increase in the number of medication technician applicants and to submission of incomplete applications. Board testimony on this legislation also indicated that implementation of the board's online application program would increase the timeliness of the certification process. Due to concerns with further extending the timeframe in which an "uncertified" medication technician could practice, Chapter 123 expires two years from the date of enactment and requires the board to study and submit a report to the General Assembly by December 31, 2011, on the status of the online program for processing initial and renewal CMT applications, the measures implemented to encourage the use of online applications, an analysis of current staffing, including staff added since January 1, 2011, and projected staffing needs.

The board has been actively working with providers to resolve the backlog of applications and provide training on completing online applications. Even so, almost 9,000 applicants from fiscal 2010 have been waiting for certification for at least 15 months. Although the board advises that none of these individuals is practicing without a certificate beyond the 180-day period allowed by Chapter 123, DLS can only reconcile such a long delay in certification if all such applicants just recently completed their training. Clearly, the board's efforts have not yet been successful, but board resources are being targeted to processing all pending applications on a first-in first-out basis.

Recommendation 1: The board should continue to prioritize certification of medication technicians; any statutory or regulatory changes related to the certification of medication technicians should be based on the findings of the report required by Chapter 123 of 2011, particularly the required staffing analysis. The board should also include the provider community when developing policy related to the certification process and training requirements for medication technicians.

Board Has Updated Licensure Database Software Which Should Facilitate Processing Initial and Renewal Applications

In 2010, the board updated its licensure database software from License 2000 to My License Office. The board offered training to its employees when moving to My License Office, which aided in a smooth transition to the new software. My License Office is a web-based service that allows for tighter security, better tracking, and added functionality for complaints and compliance. Individuals seeking licensure or certification from the board can log into the online verification site or call the Interactive Voice Response system to view the information that the board has received and what is still needed. However, according to the board, the software is more cumbersome when processing financial transactions and takes more time to conduct searches. Based on user complaints with the speed of the software, the board is adding a new database server with more memory and additional space. The software has enhanced data tracking capabilities that are currently not being fully utilized by the board. This issue will be discussed in more detail in **Chapter 4** of this report.

Board Has Evaluated Stumbling Blocks to Use of Online Licensing and Certification

In 2000, the board implemented online renewal of nursing licenses in order for licensees to have easier and faster access to the renewal process. In July 2003, the board implemented online renewal for certificate holders. According to the board's report to the budget committees in February 2011, 95% of nurses used online renewal, while 37% of CNAs and 20% of CMTs used the process. The board found that one of the major hindrances of the online renewal process for certificate holders was the requirement that the delegating nurse approve the certificate holder's application after the certificate holder completed the application online but

before the application was transmitted to the board. Therefore, the board discontinued this requirement in July 2010. Another hindrance was the board's policy of sending the renewal form in hard copy format to certificate holders at renewal time, which served as a disincentive to complete the process online. In February 2011, the board began sending certificate holders a reminder to renew instead of the renewal form. Over the last several months, the board has seen an increase in online renewals by certificate holders.

In 2010, the board began working with its online vendor (Edge Systems, Inc.) to supply all initial applications online. In anticipation of this action, meetings were held with each division within the board to ensure that all processes were addressed. The board also worked with the online vendor to include security measures and to capture the CHRC tracking number to ensure that the licensee or certificate holder had started the background check process. The board continues to work with the online vendor on methods to include disciplinary information and other necessary documentation and to allow any additional paperwork relevant to the application to be loaded online in a secure manner.

The board has moved all RN, LPN, CNA, and CMT *renewal* applications online. Currently, the board is in the process of moving all RN, LPN, CNA, and CMT *initial* applications online, with a goal of having this process completed by early 2012. The board has taken measures to increase access to online services for its licensees and certificate holders. In September 2011, the board installed two kiosks in the reception areas at the board on which nursing and CNA walk-in applicants can apply for licensure. The board plans to have five kiosks available for this purpose by January 2012. In order to complete its goal of having all initial applicants and renewals online, the board is working on ordering additional kiosks; adding secure software for receiving disciplinary information; placing initial applications for medication technicians, RN examinations, CNA endorsements, and compact state applicants online; placing compact state renewals and psychiatric nurse practitioner renewals online; and ensuring that electrologists can process their initial licenses and renewals online.

Managing for Results Goals for Processing Routine Renewals May Not Be Relevant Any Longer

In its annual Managing for Results (MFR) measures, the board set a goal of processing 95% of all routine renewal applications received by mail within five business days by fiscal 2012. The board met this goal in fiscal 2009 but then achieved a rate of just 85% in fiscal 2010. The board attributes the decline to problems with processing mailed-in renewal applications within five business days due to imaging issues that have since been resolved. In addition, the board cited increases in the numbers of licenses and/or certificates issued and inadequate staffing as reasons for the processing delays. Despite these recent delays in processing licenses and certificates, the board estimates that it will meet its MFR goals in fiscal 2012 due to the board's initiative to have all renewal candidates process their renewals online.

Annual Renewal of Licensure Will Change to Biennial in 2013

Currently, RN and LPN licenses are renewed on an annual basis according to the licensee's birth month. Licensees seeking renewal must show evidence of at least 1,000 hours of active nursing practice within the five years immediately prior to renewal. Licensees who do not meet the 1,000-hour requirement may apply for an inactive license or take a board-approved refresher course. The current system of annual license renewal is scheduled to change. Chapters 585 and 586 of 2010 establish biennial renewal for licensees beginning January 1, 2013. Licensees born in even-numbered years will be required to renew in even-numbered years, and those born in odd-numbered years will be required to renew in odd-numbered years. According to the board, the movement to biennial licensure is an effort to reconcile staffing shortages with the board's obligation to perform duties in other areas.

While the implementation of online renewal and initial licensure capabilities and the movement to biennial licensure may require greater staff involvement during the implementation period, both processes should lead to increased staffing efficiencies in other areas, particularly among those individuals who handle paper applications.

Recommendation 2: The board should monitor any staffing efficiencies related to the online licensure process and the movement to biennial licensure and reallocate staff accordingly. The board should also use its customer service survey to monitor customer satisfaction with both processes.

Chapter 3. Criminal History Records Checks

In recent years, the licensing and disciplinary duties of the State Board of Nursing (BON) have been expanded to include review of criminal history records checks (CHRCs) on three-fourths of all applicants for both initial and renewal certification and licensure. Review of CHRCs has significantly increased the board's workload and required BON to expand its staff and adopt new policies and procedures. Although board members and staff repeatedly expressed to the Department of Legislative Services (DLS) that CHRC requirements are critical to the board's mission, limited data provided by the board indicate that relatively few individuals have been denied licensure or certification based on a criminal history since the requirements were adopted. While DLS finds that the board has made progress in improving its CHRC review process, as discussed in this chapter, there is room for improvement.

Historically, the board learned about any criminal history of applicants for licensure or certification through voluntary self-reporting or as part of a complaint investigation. According to the board, many applicants did not self-report or underreported convictions, and the board only learned of the convictions after the individual was licensed or certified and a complaint was filed against the individual. The board also observed an increase in the number of convictions among licensees and certificate holders, as well as an increase in the number of serious violent crimes. In addition to these observations, in 2006, the administrators of the Nurse Licensure Compact (a multi-state agreement that enables nurses to practice across state lines) agreed to voluntarily implement CHRCs by 2008. As a member of the compact, BON pursued legislation to require CHRCs both to enhance public protection and voluntarily comply with the compact.

Criminal History Records Checks Have Significantly Increased the Board's Workload with More than 26,000 Results Reviewed Annually

Nationally, 36 state boards of nursing, including all but 5 of the 24 compact states, mandate CHRCs as a requirement of licensure. In Maryland, Chapter 390 of 2006 required registered nurses (RNs), licensed practical nurses (LPNs), certified nursing assistants (CNAs), and electrologists to submit to national and State CHRCs as part of the *initial* licensure and certification application. CHRCs are conducted by the Federal Bureau of Investigation (FBI) and by the Criminal Justice Information System (CJIS). Chapter 390 also required selected licensees and certificate holders to submit to a CHRC at least once every 12 years as a condition of *renewal* (implementation of this requirement was later delayed). These requirements alone have significantly increased BON's workload, but the impact has been further exacerbated by the explosion in the volume of licensees and certificate holders.

On October 1, 2006, the board implemented the CHRC requirement on all new licensees and CNAs. In June 2010, the board began reviewing CHRC information for licensees and CNAs seeking renewals. In total, the CHRC requirements have resulted in BON reviewing more than 26,000 CHRC results annually.

In fiscal 2010, the board reviewed 17,146 initial CHRC results, of which 14,819 (86%) were negative (no criminal history), 1,531 (9%) were positive (a criminal history was identified), and 796 (5%) were rejected (typically because the name of the applicant did not match with records or the fingerprints submitted could not be processed). An additional 8,896 CHRC results associated with renewal applications were also reviewed, of which 7,636 (86%) were negative, 793 (9%) were positive, and 467 (5%) were rejected. To handle this expanded workload, the board has dedicated four staff specifically to processing CHRC results.

Positive Criminal History Records Check Results Have Led to Relatively Few License/Certificate Denials

Even when CHRCs reveal a criminal history, most positive results do not affect fitness for licensure or certification. As shown in **Exhibit 3.1**, over the five-year period from fiscal 2007 through 2011, a total of 3 RN applicants, 3 LPN applicants, and 124 CNA applicants were denied initial licensure or certification due to a positive CHRC result. Thus, from the total of 63,915 CHRC results submitted to the board for initial licensure and certification between fiscal 2007 and 2011, only 0.2% of total RN, LPN, and CNA applicants were denied licensure or certification due to positive CHRC results.

Exhibit 3.1 Initial Licenses and Certificates Denied Due to Criminal History Fiscal 2007-2011

<u>License/Certificate Type</u>	<u>Number of Denials</u>
Denial Due to Positive Criminal History Records Check Results	
Registered Nurse	3
Licensed Practical Nurse	3
Certified Nursing Assistant	<u>124</u>
<i>Subtotal</i>	<i>130</i>
Denial Due to Self-reporting of a Criminal History	
Certified Medication Technician*	105
Total	235

*Certified medication technician certificate denials are based on self-disclosure of criminal history on the initial application. Criminal history records checks are not currently required of certified medication technicians.

Source: State Board of Nursing

In addition to those licenses and certificates denied due to positive CHRC results, 105 certified medication technician (CMT) applicants were denied certification due to self-reporting of a criminal history on the CMT application over the same period.

Board Does Not Routinely Track License/Certificate Denials Due to Positive Criminal History Records Check Results

Board members and staff interviewed by DLS consistently stated that CHRCs are necessary to further the board's mission of advancing safe, quality nursing care. Thus, information on denials is critical to determine whether and to what extent the CHRC requirement is furthering the board's mission. However, the board does not routinely track the number of license and certificate denials resulting from positive CHRC results; rather such information was specially produced upon request of DLS.

Instead of only running license or certificate denial data on request, the board should routinely use the information available to it to evaluate the implementation of the CHRC requirement. Data on the number of CMT denials would be useful in determining the effectiveness of the current self-disclosure policy and in analyzing the necessity of the board's proposal to extend the CHRC requirement to CMTs. Both of these issues are discussed in more detail later in this chapter.

Recommendation 3: The board should maintain annual data on the number of applicants for licensure as an RN or LPN and certification as a CNA that are denied licensure or certification based on positive criminal history records check results. Information should also be maintained on the number of applicants for certification as a CMT that are denied certification based on self-disclosure of a criminal history.

Board Review of Criminal History Records Check Results Involves Multiple Staff

In anticipation of the CHRC requirement, the board's former executive director established procedures for integration with the rest of the application for licensure or certification. The board established separate units for nurses and CNAs: the Exam or Endorsement Division processes CHRC results for RNs and LPNs (depending on whether the applicant is taking the exam or using reciprocity), while the CNA Division processes CHRC results for CNAs. Initial applicants receive all instructions on obtaining CHRCs from the board's website or directly from initial application log-in sites. (DLS review of the board's website found that information on how to comply with the CHRC requirement was easy to find and follow.) Applicants must apply for CHRCs before submitting their initial application for licensure or certification with the board. Once the board receives a CHRC result, the application

can be processed in conjunction with the assessment of the CHRC result. **Exhibit 3.2** outlines the process followed by the board after receiving CHRC results from the FBI and CJIS.

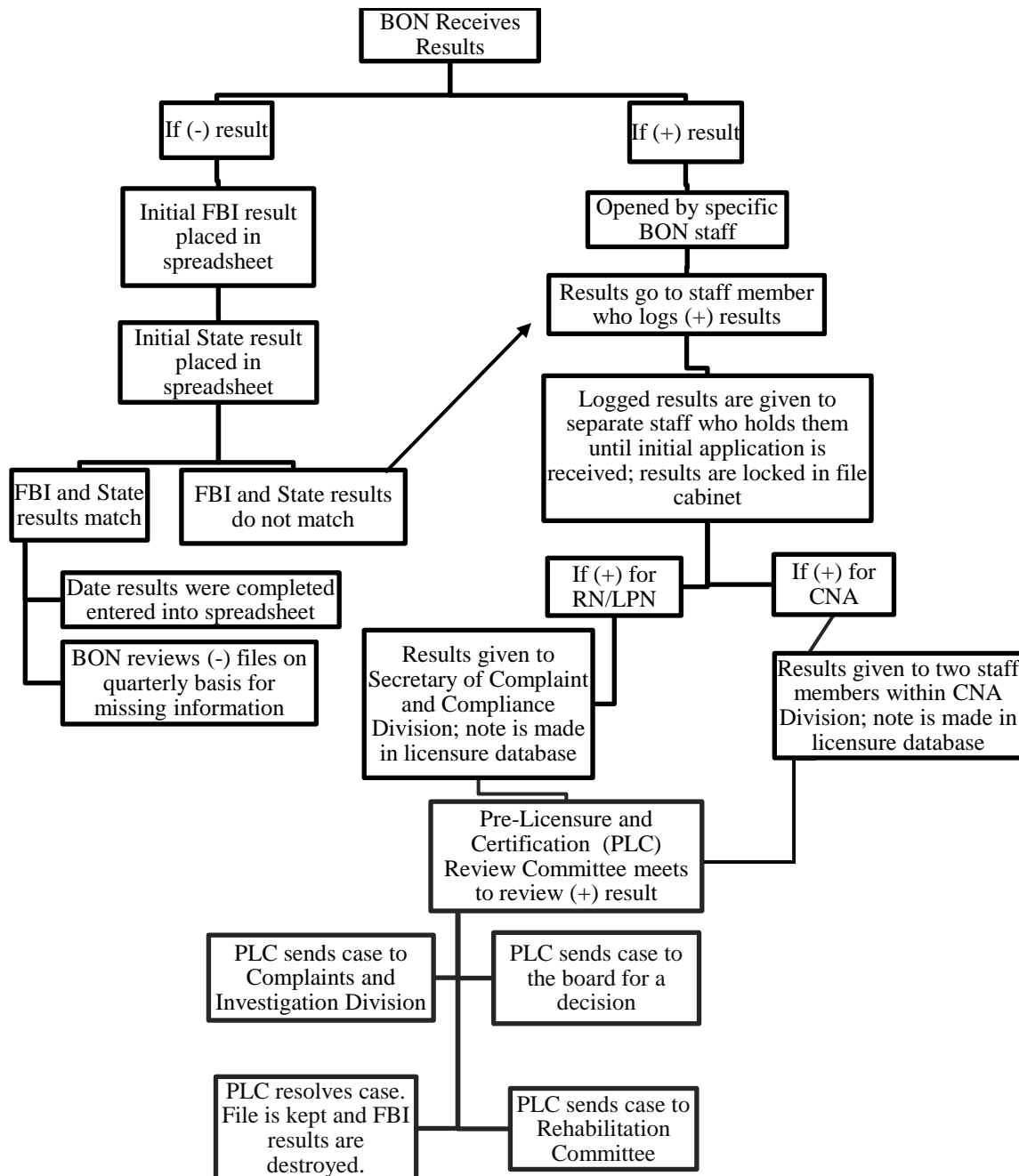
Board procedures for processing CHRC results are designed to maintain confidentiality and require utilizing multiple staff throughout the process. All negative results (no criminal history) are imported into the licensure database at least weekly. Board staff examines negative results on a quarterly basis and follows up on any applicants who are missing either an FBI or CJIS result to determine the cause of the delay. Positive CHRC results (those where a criminal history is identified) are handled by a separate staff member who holds the results until the board receives an application from the applicant. Positive results are separated based on license type with RN/LPN results going to the Complaint and Compliance Division and CNA results staying within the CNA Division, but being processed by separate designated staff.

BON Implemented Streamlined Review for Positive Criminal History Records Check Results in Anticipation of Increased Complaint Volume

In fiscal 2008, BON staff, in consultation with the board, implemented policies to streamline the review process for handling positive CHRC results. All positive results are classified as complaints and are investigated by a Pre-licensure and Certification (PLC) Review Committee that consists of the CNA coordinator for discipline and compliance, the discipline and rehabilitation coordinator for nurses, and the executive director. PLC meets twice per month. If a CHRC result shows a minor misdemeanor that is at least five years old, PLC has the authority to grant the certificate or license (or renewal) without the approval of the board. Felonies or misdemeanors that PLC is not comfortable with making a licensing determination on are sent to the full board. PLC also has the authority to make referrals to the appropriate rehabilitation committee of the board or to the Complaints and Investigations Division for additional investigation. If investigated, the division then contacts the applicant or current licensee or certificate holder for further documentation. The information is evaluated, the individual is interviewed, and the division determines the status of the application. Based on a representative sampling conducted by the board, approximately 85% of positive CHRC results are cleared by PLC, 9% are referred to the board, 5% are referred to a rehabilitation committee, and less than 1% is referred to investigations.

According to the board, in fiscal 2011, the board processed 1,810 complaints based on CHRC results or, in the case of CMTs, self-disclosure of criminal history. Of these complaints, 533 were for RNs and LPNs (29%), 1,013 were for CNAs (56%), and 264 were for CMTs (15%).

Exhibit 3.2
Criminal History Records Check Process
Followed by BON Upon Receipt of Results



Source: State Board of Nursing

Criminal History Records Check Policies and Procedures Should Be in Writing

The board has taken proactive steps in response to the increased workload presented by the implementation of CHRCs through organizational restructuring and the streamlining of complaint resolution policies associated specifically with positive results. However, these policies and the procedures related to them have not been reduced to writing. In order to ensure uniformity and consistency in implementing CHRC policies and to promote transparency among licensees and certificate holders who may be subject to investigation, any policies and procedures relating to the handling of positive CHRC results, including those followed by PLC, should be in writing and made available to both BON staff and, as appropriate, the public.

Recommendation 4: The board should develop policy and procedure manuals on how the board handles positive criminal history records check results. These policies and procedures should be shared with board members and staff, and relevant policies should be published on the board's website.

Board Should Delay Further Consideration of Expanding Criminal History Records Check Requirement to Medication Technicians

As discussed above, CMTs are not required to submit to CHRCs, although the application includes questions for the self-disclosure of a criminal history. In fiscal 2011, 264 CMTs self-disclosed a criminal history. Cumulatively over the past five fiscal years, a total of 105 medication technicians have been denied certification based on this self-disclosure. Despite the self-disclosure policy, the board is considering seeking legislation during the 2012 session to extend the CHRC requirement to CMTs (1) because they are responsible for direct patient care and have access to medications; and (2) to be consistent with current requirements imposed on other board licensees and certificate holders. According to the board, CMTs would be required to submit to CHRCs upon initial certification and then ultimately at least once every 12 years as a condition of renewal (as is currently required of other individuals regulated by the board). Board members interviewed by DLS all agreed that extending the CHRC requirement to CMTs was of utmost importance to protect the public.

Expansion Would Require the Board to Review Up to 25,000 Additional Criminal History Records Check Results and Handle Additional Complaint Cases Annually

Expanding the CHRC requirement to CMTs would have a significant impact on the workload of the board. New CMT certificates *issued* in fiscal 2011 totaled 11,862, and the board advises that an additional 11,996 applications made in fiscal 2011 were still pending as of October 20, 2011. Moreover, another 8,966 applications made in fiscal 2010 were still pending

on that date. Therefore, the administrative impact of processing up to 25,000 additional CHRC results annually (assuming the backlog is cleared) represents double the current workload for all other categories. Under the current CHRC requirement, 9% of all CHRC results received by the board are positive; thus, expanding the CHRC requirement to CMTs could add 2,250 complaints to the board's workload annually, assuming the same percentage of positive results applies to CMTs. Regardless, it would further delay the initial processing of CMT certificates. The estimated impact on workload would be even more significant when the CHRC requirement extends to renewals. What is not clear is the extent to which any positive results obtained would substitute for those identified through the current self-disclosure policy or instead simply add to the volume.

Given Delays, Employers Justifiably Concerned About Impact of Expanding Requirement to Certified Medication Technicians

Interviews conducted by DLS with provider organizations that employ CMTs found that providers are concerned with the impact of extending the CHRC requirement on their ability to recruit and retain CMTs. Providers are concerned that the additional delays associated with the board processing and reviewing CHRC results would further delay the timely certification of CMTs and exacerbate the already difficult process of recruiting low-wage direct support staff. Furthermore, most adult dependent care providers are already conducting background checks on their employees, some of whom are CMTs.

Under § 19-1902 of the Health-General Article, adult dependent care providers (including assisted living facilities, adult day care programs, and group homes) must apply for a State CHRC or request a private agency CHRC on employees who are not otherwise licensed or certified by a health occupations board and who have direct access to dependent adults in the program. Although not required to conduct these CHRCs on CMTs (as they are certified by the board), most providers do. According to providers, the cost of a private background check can be as low as \$15. Conversely, a national and State CHRC costs the applicant \$57.25. Before seeking extension of the CHRC requirement to CMTs, the board should work with stakeholders to explore the implications on providers and CMTs as well as the potential of altering or expanding the current requirement on adult dependent care providers.

Recommendation 5: The board should delay seeking legislation to require CMTs to submit to criminal history records checks until the board has (1) implemented its online certification process for CMTs in a manner that results in the timely processing of certificates; (2) analyzed the effectiveness in protecting the public of the current criminal history self-disclosure policy for CMTs; (3) determined whether criminal history records checks are necessary in light of the self-disclosure policy; and (4) made any personnel changes relating to the certification of CMTs as a result of the personnel study recommended by this report. If and when legislation is introduced to require CMTs to submit to criminal history records checks, the board should consult with the provider and

advocacy communities that employ and represent medication technicians and take into consideration current statutory requirements related to criminal history records checks for adult dependent care programs.

Receiving Criminal History Records Check Information from Other States Is Problematic for Board

Under Maryland law, applicants for licensure as an RN or LPN and applicants for certification as a CNA may be waived from the CHRC requirement if they have completed such a check through another state board of nursing within the previous five years. However, according to the board, other states cannot share the results of these checks due to confidentiality concerns. As a result, the board is requiring a new CHRC even if the applicant had recently submitted to a check in another state.

DLS review of this issue found that federal law prevents the board from sharing CHRC information with other states. P.L. 92-544 prohibits federal criminal records obtained by boards of nursing as part of the licensing process from being shared with health care employers or others. According to the National Council of State Boards of Nursing (NCSBN), several boards of nursing have had their CHRC collection policies and procedures audited by the FBI in order to ensure that confidential data are not shared. Since the current authorization to waive a CHRC requires the board to obtain information from other states that the board is unable to lawfully obtain, this authorization should be removed.

Eliminating the waiver authority should not have a significant impact on licensees or certificate holders. Although the board does not maintain specific data on this issue, the board stated that the number of individuals who have requested a waiver authority has been small. Furthermore, according to a survey conducted by NCSBN, Pennsylvania and Virginia (two of the most likely states from which nurses would attempt to utilize the waiver requirement) do not require CHRCs as a condition of licensure.

Recommendation 6: Statute should be amended to remove the authorization for applicants for licensure as an RN or LPN and applicants for certification as a nursing assistant to be waived from a criminal history records check if they have completed such a check through another state board of nursing within the five years preceding the date of their application. Such waivers cannot be granted because obtaining the criminal history records information from other states violates federal law.

Chapter 4. Complaint Resolution

Ensuring fitness to hold a license or certificate to practice extends to the State Board of Nursing's (BON) role in investigating complaints and taking disciplinary action against licensees and certificate holders where warranted. The volume of total complaints handled by the board has increased significantly, largely due to the criminal history records check (CHRC) requirement (discussed in detail in **Chapter 3** of this report) and the increasing number of individuals regulated. The board has also amassed a sizeable backlog of complaints carried over from prior years but has recently made progress in tackling the backlog. BON has not been able to meet its goals for the timely resolution of complaints, and it is unclear yet whether the actions taken to reduce its complaint backlog will enable it to do so. However, further changes to the complaint resolution process could make it more efficient.

Total Complaint Volume Handled by the Board Doubled from Fiscal 2006 to 2010 as Complaint Backlog Grew

As shown in **Exhibit 4.1**, between fiscal 2006 and 2010, the total number of complaints handled by the board for registered nurses (RNs), licensed practical nurses (LPNs), certified nursing assistants (CNAs), and certified medication technicians (CMTs) doubled. This significant increase can be attributed to the CHRC requirements, expansion of the board's jurisdiction to include certification of CMTs, and an overall increase in the total number of individuals licensed or certified by the board. From fiscal 2010 to 2011, however, the number of total complaints decreased by 13%.

As discussed in Chapter 3, all positive CHRC results (those that identify a criminal history) become complaint cases. Prior to the CHRC requirements, these complaints were not generated unless the board otherwise became aware of an applicant's criminal history. The impact of CHRC requirements can be seen beginning in fiscal 2008 when the board began reviewing CHRC results for all new licensees and CNAs and the number of new complaints sharply increased. For RNs/LPNs, the number of new complaints increased by 71% from fiscal 2007 to 2008. Since that time, annual growth has slowed but continues to increase by an average of 26% per year. For CNAs, the number of new complaints jumped by 70% from fiscal 2007 to 2008, then declined slightly between fiscal 2008 and 2009 (4%). Growth in the number of new complaints for CNAs resumed between fiscal 2009 and 2010 (6%) and fiscal 2010 and 2011 (17%).

As the volume of new complaints increased, so too did the volume of complaint cases that the board was not able to complete in a given year and thus carried over from one year to the next. In particular, in fiscal 2008, complaints pending from prior years against nurses increased by more than 270%. This increase reflects both a backlog of CHRC-related complaints, as well as a significant number of fiscal 2007 complaint files (595 cases) that the board discovered had

erroneously not been entered into the complaint database, accounting for an additional carryover of 595 cases from fiscal 2007 to 2008.

Exhibit 4.1
Trends in Complaints Handled by the State Board of Nursing
Fiscal 2006-2011

	<u>FY 2006</u>	<u>FY 2007</u>	<u>FY 2008</u>	<u>FY 2009</u>	<u>FY 2010</u>	<u>FY 2011</u>
<u>RNs and LPNs</u>						
Pending Complaints	566	585	1,584	1,496	1,748	1,468
New Complaints	590	404	689	849	1,146	1,381
Subtotal	1,156	989	2,273	2,345	2,894	2,850
<u>Nursing Assistants</u>						
Pending Complaints	476	511	679	1,132	1,105	348
New Complaints	631	643	1,026	988	1,052	1,235
Subtotal	1,107	1,154	1,705	2,120	2,157	1,583
<u>Medication Technicians</u>						
Pending Complaints	0	358	394	467	201	83
New Complaints	486	347	423	301	274	301
Subtotal	486	705	817	768	475	384
Total	2,749	2,848	5,282	5,233	5,526	4,817

Note: The board received one complaint about a licensed electrologist in fiscal 2010, which is not included in the total.

Source: State Board of Nursing

Complaint Backlog Now Declining, but New Complaints Still Up

As shown in Exhibit 4.1, from fiscal 2010 to 2011, the number of new complaints received by the board, continued to increase in all categories, generally consistent with growth in the number of regulated individuals. However, the board's complaint backlog decreased significantly for every license and certificate category. For nurses, the number of pending complaints declined by 16%. The number of complaints pending for CNAs declined by 69%,

while the number of complaints pending for CMTs declined by 59%. The board has not been able to fully explain how it achieved these reductions in its long-standing and, heretofore, growing backlog. Nevertheless, it appears that the board's efforts to reduce the backlog, which are described below, have been quite successful.

Board Has Implemented Policies to Reduce Backlog

According to the board, many cases that are five years old or older are carryovers from previous investigators for whom cases were not reassigned. The board has been reviewing any such cases, with about 50 cases remaining. At the time of the transition to the current executive director, there were a total of 8 investigators; the board currently employs 11 investigators.

The board has implemented several policies to reduce the long-term backlog in complaints. For example, the executive director and a committee can review complaints that are five years old or older and choose not to refer them to the board. In addition, the board has established a complaint review committee that filters out serious and nonserious cases and prioritizes the serious cases. Although there are no written guidelines for what is considered a serious or nonserious case, the board considers the nature of the offense, whether the offense resulted in physical or emotional harm to another individual, and the amount of time that has passed since the offense was committed. Examples of serious cases include sex offenses, theft, or firearm possession while an example of a nonserious case would be a public intoxication conviction that is several years old.

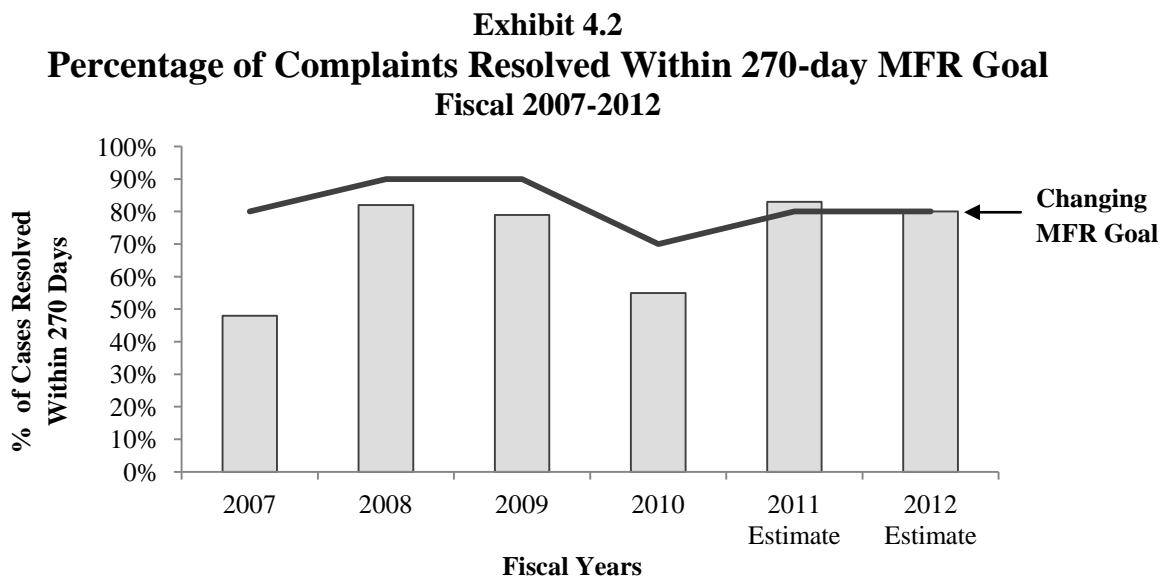
The board conducts three, rather than one, settlement conferences per month. During a settlement conference, a complaint respondent meets with representatives of the board. If appropriate, a consent order is drafted, and the consent order is reviewed and signed by the respondent. The order is reviewed by the board at the next board meeting and, if approved, is signed as a final order of the board. According to the board, the increased use of settlement conferences has decreased the processing time for an order by several months. In addition, the board has increased the use of public advisory letters as an alternative to formal disciplinary actions. In fiscal 2011, the board issued 119 public advisory letters. The board issues advisory letters if an investigation reveals that a statute or standard of care has been breached to the extent that it requires recognition by the board but is not serious enough to warrant formal charges.

Board Has Had Difficulty Meeting Goals Regarding Timeliness of Complaint Resolution

As part of Managing for Results (MFR), the board seeks to process a certain percentage of complaints within a specific number of days. In fiscal 2006, the board's MFR goal was to resolve 90% of complaints within *180 days*, though the board was able to resolve only 57% of cases in that timeframe. Beginning in fiscal 2007, the board lowered its MFR goal to 80% of cases within *270 days* and resolved only 48% of cases in that timeframe. Since fiscal 2007, the

board's MFR goals regarding the timeliness of complaint resolution have shifted from a low of 70% to a high of 90% of cases within 270 days. Although the board optimistically estimates each fiscal year that it will meet or even exceed its MFR measure, in reality, the board has yet to achieve these goals in recent years (though actual fiscal 2011 performance has not yet been reported).

Exhibit 4.2 shows the percentage of complaints resolved by the board within 270 days from fiscal 2007 to 2012 compared with the board's changing MFR goals over those same years. BON's performance improved significantly in fiscal 2008 and 2009 despite the significant increase in the number of new complaints and complaints pending from prior years. However, in fiscal 2010, the board's MFR goal declined to only 70% of cases within 270 days, and its performance similarly declined to only 55%. The board attributes this delay to the transition to the new executive director who, upon her appointment, reviewed and made recommendations on all open cases, many of which were several years old. According to the board, the executive director and three other staff reviewed approximately 700 open cases and made a determination on each case, which had an impact on the meeting the resolution timeframe goals.



Note: Although it appears that BON has met or will meet its goal in fiscal 2011 and 2012, figures for those years represent the board's estimates for timeliness of resolution and not actual performance.

Source: State Board of Nursing

The board estimates that it exceeded its current MFR goal of resolving 80% of cases within 270 days in fiscal 2011 and will meet the goal in fiscal 2012. The board has been working to address its complaint backlog, which appears to have declined in fiscal 2011 as shown in Exhibit 4.1, and received additional personnel in the complaint resolution area.

However, based on past performance and the continued growth in the volume of new complaints, it remains unclear whether BON will be able to meet the current 80% goal on an ongoing basis.

Further Changes to Complaint Resolution Process Could Make It More Efficient

The board has worked to streamline its complaint resolution process, which appears to have contributed to a reduced backlog of cases, particularly for CNAs and CMTs, and has enabled it to hear cases in a more timely manner. Although board members are pleased with the streamlined process, DLS is concerned by the lack of written guidelines, particularly related to the procedures used by complaint review committees and in settlement conferences. Moreover, even though the board's complaint backlog has been reduced, a significant number of cases continue to be carried over, and the volume of new cases is still rising. Currently, the board hears cases on only one day each month. Holding additional hearings could assist the board in further reducing the complaint backlog.

Recommendation 7: The board, in consultation with the Office of the Attorney General, should develop a policy and procedure manual related to the complaint resolution process, including guidelines to be used by complaint review committees and in settlement conferences.

Recommendation 8: BON should continue to assess its complaint backlog and, as necessary, hold additional hearings.

The inconsistent quality of investigative reports has resulted in delays in adjudicating complaints. The board employs 11 investigators who carry an average caseload of 50 to 60 cases. (According to the director of the Complaints and Investigations Division, this average caseload is manageable and is a significant improvement from the average caseload of 250 cases that investigators were handling in fiscal 2009.) Of the 11 investigators, 6 are nurse investigators and 5 are non-nurse investigators. In DLS interviews, board members stated that the non-nurse investigators often did not seek the type of information that would be sought from a nurse investigator because they lacked a nursing or medical perspective. Several board members cited incidents during hearings where they had to postpone the hearing until the next board meeting in order to get additional information from the investigator.

Recommendation 9: Board members should meet with all investigative staff to discuss their expectations for investigations and should work with the nurse investigators to develop training for non-nurse investigators in order to prevent future delays.

Board Workgroup Has Developed Draft Sanctioning Guidelines

Chapters 533 and 534 of 2010 require all health occupations boards to adopt sanctioning guidelines. The adoption of sanctioning guidelines will inform licensees and the public more specifically about action the board can take when a licensee violates a specific ground for discipline. Second, the guidelines will help ensure that the board is imposing consistent sanctions. The board established a workgroup to develop the guidelines. The workgroup presented its recommendations to the board at its October 2011 meeting. If adopted by the board, the sanctioning guidelines will be submitted to the Joint Committee on Administrative, Executive, and Legislative Review (AELR) in November 2011. It is, therefore, likely that the board will not have had sufficient experience in the use of the guidelines by the December 2011 reporting date (as specified by Chapters 533 and 534).

Recommendation 10: The board should report again to the Senate Education, Health, and Environmental Affairs and House Health and Government Operations committees on its implementation and use of sanctioning guidelines by December 1, 2012 (by which time the board is expected to have been using the guidelines for about one year).

Complaint Tracking Database Has Not Been Used Effectively

As described in **Chapter 2**, the board moved from License 2000 to My License Office in 2010. My License Office has enhanced complaint tracking capabilities including the ability to run reports. Examples of complaint data that can be tracked by My License Office include current complaint activities by assignee, complaint status, respondents by complaint status, and a complaint detail and activity report. Unfortunately, the board rarely runs reports of the data. Instead, reports on complaint data are run only as requested. This caused many problems for DLS staff throughout the sunset review process. On several occasions, DLS requested complaint data that, instead of being readily available, had to be extracted by the board and resulted in delayed receipt of information. To fulfill requests, the board often had to develop the data query, and staff needed several days to process them.

Tracking complaint data would enable the board to measure the impact of its streamlined complaint resolution policies, such as the increased use of settlement conferences and public advisory letters. The board should be monitoring cases that are attributable to CHRCs as well as the license and certificate denials that result from a positive CHRC result, the amount of time a complaint is in each stage of the complaint process, which complaints are settled in a settlement conference, and which complaints are settled through a public advisory letter.

Recommendation 11: The board should utilize its complaint tracking capabilities to develop, run, and maintain a catalog of complaint data reports on a regular basis and use the results to make staffing and automation changes to improve the overall complaint resolution process.

Chapter 5. Customer Service

The 2001 sunset evaluation of the State Board of Nursing (BON) identified that licensees had difficulty contacting the board. Since that time, the number of individuals licensed or certified by the board has increased significantly, and with it, so have the number of complaints concerning customer service. This chapter explores additional training that could be offered to employees who answer the phones, alterations the board can make to its website, and changes to BON's existing customer service survey that should improve customer service.

Additional Training for Telephone Operators May Improve Customer Service

The board uses an automatic call distribution (ACD) system to answer calls from the public. The ACD system serves nurses and nursing assistants. According to board staff, the board has contracted for traffic studies on the phone system and implemented two upgrades.

The most recent traffic study of the board's ACD system was conducted in April 2009 by Verizon. Verizon staff observed a nursing agent handle calls and reviewed ACD reports for March 2009. According to Verizon, the March ACD reports reflected a high number of abandoned calls, especially for the CNA Division. Among other recommendations, Verizon suggested adding two agents to each division, especially during peak traffic days, to reduce the long wait times and abandonment rates.

In February 2011, the board hired three ACD operators to answer phones on a full-time basis and assigned an information technology support staff to assist in answering phones. The board has trained the new ACD operators in use of the licensure database and imaging system, and the board secretary has assisted the new operators by training them in proper phone etiquette, answering day-to-day questions, and providing general instructions. However, despite the training, several staff members voiced concern that the operators only answer and transfer calls or take messages. To improve customer service further, the board should require ACD operators to keep track of the questions they receive so that consistent responses can be developed for the subjects that generate multiple questions. Additionally, several staff members noted that the public is frequently agitated by long wait times prior to speaking to board staff, which leads to confrontational conversations. Staff may benefit from further training in phone etiquette that emphasizes diffusing tense situations.

Recommendation 12: BON should ensure that ACD operators have the appropriate training to handle frequently asked questions and that all staff who interact with the public are trained on phone etiquette for diffusing tense situations.

Board Could Improve the Organization of Its Website

In carrying out its mission of protecting the public and advancing the profession of nursing in Maryland, the board provides a considerable amount of information to the public and to the licensees and certificate holders it regulates. Most such information is available on the board's website, but the current organizational structure of the website can be difficult to navigate. For example, the Department of Legislative Services (DLS) had difficulty accessing certain information concerning board meetings and the licensure and certification processes. Though information on criminal history records checks is relatively easy to find, access to some information is not intuitive, specifically, notice for monthly board meetings cannot be found under the "Public Meetings" link at the top of the home page but instead is found under the "Check Board News for important events and alerts" link found at the bottom of the home page. In other instances, information is spread among multiple links such as "On-Line Initial Certification Application," "On-Line Licensure and Certification Renewal," and "Nursing Assistant Certification." An applicant for certification as a nursing assistant must click on each of the links to get complete information on the application process. If the website were easier to navigate or some of the links consolidated, for example, it could reduce phone call volume and improve customer service.

Recommendation 13: The board should include all public board meetings under the "Public Meetings" link and should make the entire website easier to follow by placing everything needed for RNs under one link, LPNs under another link, and so on.

Posting of Disciplinary Information Does Not Provide the Public with Accurate and Complete Information

Chapters 533 and 534 of 2010 address the mission of the health occupations boards to protect the public by requiring the boards to post final disciplinary orders online. The board has satisfied this requirement, but DLS found that the disciplinary information posted on the board's website is inconsistent and misleading. The board has provided the information on its website as follows:

- under the "MBN Alert" link, the names of individuals who have been issued final orders appear listed in alphabetical order according to the type of final order issued; however, the listing does not include dates;
- under the "Public Orders" link, public orders may be accessed by clicking on the names of individuals who have been issued final orders as listed in alphabetical order according to whether the individual is licensed or certified; and

- under the “Look-up a Licensee” link, an individual can enter a licensee’s or certificate holder’s first and last name or license or certification number and find general information that includes a list of disciplinary actions and dates.

DLS reviewed the public orders posted under the “Public Orders” link and compared the information to the names posted under the “MBN Alert” link and the information under the “Look-up a Licensee” link. In many instances, a licensee or certificate holder named on a final order posted under the “Public Orders” link was not listed under the “MBN Alert” link, although the information did seem consistent with the information under the “Look-up a Licensee” link. Further, all of the links lack descriptions and qualifiers for what information can be found under the link and directions as to where to find additional disciplinary information. For example, BON has routinely posted final orders since October 2010 and is now in the process of posting older orders but does not provide an explanation of what final orders are posted under the “Public Orders” link. Likewise, an individual who uses the “Look-up a Licensee” link may see that a license was revoked but not know that the public order can be viewed under another link.

Recommendation 14: The board should ensure that posted disciplinary information is accurate, consistent, and up to date. In addition, the board should include descriptions of what information is available and directions as to how to access the information. The board should consider eliminating the “MBN Alert” and “Public Order” links and post disciplinary action by date with direct links to the public orders and include direct links to public orders under the “Look-up a Licensee” link.

Customer Service Survey Should Be Enhanced to Increase Its Effectiveness

In its 2001 sunset evaluation of the board, DLS recommended that the board implement an action plan with customer service indicators. The board responded to the recommendation by establishing a Managing for Results (MFR) goal to provide high quality customer service to the nursing community as measured through a customer service survey. The board administered the original customer service survey through voluntary responses to its newsletter. The survey was not administered in fiscal 2008 through 2011.

In July 2011, the board reinstituted use of a customer service survey. The new survey is administered through the homepage on the board’s website under the link “Please Take Our Customer Satisfaction Survey.” The link allows a user to electronically submit a survey from the homepage. The survey includes eight questions, four of which concern the respondent’s relationship with the board and four of which concern the respondent’s customer service experience with board staff.

DLS continues to believe that customer service indicators are an important tool in improving the service provided by board staff and that an online customer service survey has the

potential to gauge the level of service provided. However, the survey is only as effective as the questions it contains and the responses it generates. The board could improve the effectiveness of the survey by adding more specific questions regarding the interaction between the respondent and board staff and providing greater access to the survey.

Half of the survey questions concern whether and how the respondent is licensed or certified. Although the majority of responses may come from licensees or certificate holders, members of the public, including individuals lodging complaints and employers of licensees or certificate holders, may have interactions with the board that warrant consideration. The questions on the survey should focus more on the interaction between the respondent and the board and less on whether and how the respondent is licensed or certified by the board. For example, the survey could include questions such as:

- What was your reason for interacting with the board? (Initial licensure or certification, renewal of license or certificate, delay of licensure or certification, or making a complaint?)
- Was the interaction online, by phone, or in person?
- How long did it take to reach a staff member (amount of time on hold or amount of time to receive a returned call or email, or, if at the office, amount of time to physically speak to a staff member)?
- Did the staff member help resolve the issue in a clear manner? Please explain.
- Did the staff member treat you courteously? Please explain.
- Did you use the online application or renewal process? If so, did you find the process to be user friendly? Do you have any suggestions on how the process could be improved?

Additionally, the more responses to the survey the board receives, the more information the board will have to improve the service it provides. The board has indicated that it has received only a few responses since posting the survey on its website in July. Currently, the survey is only available through the homepage on the board's website. The board should take actions to increase responses.

Recommendation 15: The board should add questions to the “Customer Satisfaction Survey” that are specific to the respondent’s interaction with BON staff. Further, the board should encourage more responses to the customer service survey by including prompts to complete the survey after the submission of an application or complaint and

requiring ACD operators and staff to inform licensees, certificate holders, or the public about the online survey.

Board Could Improve Availability of Information to Licensees, Certificate Holders, and the Public

The board informed DLS that it published its last online newsletter in September 2008, although its website still has a link for its newsletter “The Communicator.” Instead of a newsletter, the board now regularly posts updated board information on its website. Unfortunately, as discussed above, the website is difficult to navigate. Newsletters are well established and inexpensive public relations tools. The board should reestablish its newsletter by publishing critical and timely information on a biannual basis. The board can continue its practice of posting the newsletter online but should consider emailing all licensees and certificate holders a link to each newly posted newsletter.

Recommendation 16: The board should reestablish an online newsletter as an opportunity to enhance communications between the board, its licensees and certificate holders, and the public.

Chapter 6. Board Resources and Administrative Issues

To adequately perform its licensing, certification, and disciplinary functions, the State Board of Nursing (BON) needs resources, particularly solid finances and sufficient personnel. This chapter provides an overview of resources available to the board and makes recommendations for improvement. In addition, resolution of several administrative issues could help improve board operations.

Board Is Special Funded and Has Carried a Robust Fund Balance

In 1991, the General Assembly gave BON special-fund status. Thus, the board does not receive funding from the State's general fund and instead is directly funded through the fees paid by licensees and certificate holders, which have to be set to cover the costs of the board. This special-fund status allows the board to carry over revenue from one year to another to better handle additional costs that may arise in subsequent years. This carryover is called a fund balance and consists of surplus revenues from prior years. Based on its size, the board's target fund balance should be approximately 20% of expenditures.

Given the increase in the board's licensure and certification responsibilities and the associated increase in fee revenues, it is not surprising that the board's fund balance has continued to grow – so much so that in recent years, BON's robust fund balance has made it a target for transfers to the general fund through several Budget Reconciliation and Financing Acts. Specifically, the board has been required to transfer \$500,000 to the general fund in fiscal 2009, \$305,549 in fiscal 2010, and \$295,104 in fiscal 2011. The ending fund balance for fiscal 2011 was 35%, and the projected ending fund balance for fiscal 2012 is 27%, as shown in **Exhibit 6.1**. Although the estimate for fiscal 2012 indicates that board expenditures will exceed estimated revenues, the board had a similar estimate in fiscal 2011 that was not realized. If realized, however, the board will begin to spend down its fund balance due to utilization of carryover revenues for ongoing costs rather than due to transfers to the general fund.

Review of the board's budgets for fiscal 2007 through 2012 indicates that revenues generally exceed expenditures. Board revenues have ranged from about \$5.4 million to \$6.9 million annually and are projected to be \$7.1 million in fiscal 2012. Board expenditures have ranged from \$5.2 to \$6.7 million from fiscal 2007 to 2011 and are estimated to increase to \$7.4 million in fiscal 2012. Recent expenditure increases are at least partially attributable to new positions, including four in fiscal 2011 and an additional three in fiscal 2012. Regardless, the board has a healthy fund balance that should provide it with sufficient money to implement the recommendations made throughout this report.

Exhibit 6.1
Fiscal History of the State Board of Nursing
Fiscal 2007-2012

	<u>FY 2007</u>	<u>FY 2008</u>	<u>FY 2009</u>	<u>FY 2010</u>	<u>FY 2011</u>	<u>Estimated FY 2012</u>
Beginning Fund Balance	\$778,084	\$986,817	\$1,633,578	\$1,884,048	\$2,405,680	\$2,302,855
Revenues Collected	5,444,330	5,851,923	5,964,037	6,773,441	6,854,822	7,100,000
Total Funds Available	6,222,414	6,838,740	7,597,615	8,657,489	9,260,502	9,402,855
Total Expenditures	5,186,925	5,205,162	5,213,611	5,946,260	6,662,549	7,408,777
Direct Costs	4,933,165	4,985,320	4,960,177	5,682,358	6,436,868	7,187,134
Indirect Costs	253,760	219,842	253,434	263,902	227,681	221,643
Ending Fund Balance	1,035,489	1,633,578	2,384,004	2,711,229	2,597,953	1,994,078
Transfer to General Fund			500,000	305,549	295,104	
Balance after Transfer as % of Expenditures	20%	31%	36%	40%	35%	27%
Target Fund Balance (20% of Expenditures)	\$1,037,385	\$1,041,032	\$1,142,722	\$1,189,252	\$1,332,510	\$1,481,755

Note: The board indicates that the discrepancies between the ending and beginning fund balance figures from fiscal 2007 to 2008 and fiscal 2009 to 2010 are due to accounting adjustments made by DHMH.

Source: Department of Health and Mental Hygiene

Board Staff Has Increased Along with Licensure and Certification Workload

In fiscal 2006, BON licensed or certified 158,277 individuals. By fiscal 2011, the board's licensure and certification workload had increased by 73%, with the board licensing or certifying 273,336 individuals. However, as shown in **Exhibit 6.2**, between fiscal 2006 and 2012, the total number of authorized positions for the board increased by only 24%, from 60.91 to 75.51.

Exhibit 6.2
Number of Authorized Staff
State Board of Nursing
Fiscal 2006-2012

<u>Fiscal Year</u>	<u>Total Individuals Licensed or Holding Certificates</u>	<u>Positions</u>		
		<u>Regular</u>	<u>Contractual</u>	<u>Total</u>
2006	158,277	49	11.91	60.91
2007	130,272	57	11.55	68.55
2008	190,987	53	9.56	62.56
2009	245,824	64	2.76	66.76
2010	259,328	68	1.70	69.70
2011	273,336	72	1.70	73.70
2012	274,560 (estimated)	75	0.51	75.51

Note: The number of individuals licensed or certified by BON does not include advanced practice certifications held by registered nurses (RNs) as they are already counted as licensed RNs. Likewise, the process by which nurses achieve licensure (exam or endorsement) is not reflected. The total does, however, include electrologists.

Source: State Board of Nursing

In fiscal 2011 and 2012, the board received six additional regular positions to help account for the increase in workload. The positions include an administrative specialist to coordinate criminal history records checks (CHRCs), an additional health facility surveyor to investigate complaints, a paralegal to provide administrative support to the board's legal department, an additional investigator to handle complaints, and two administrative specialists to aid in the certification of nursing assistants (CNAs) and medication technicians (CMTs). Also, a contractual position was converted to a full-time position for an administrative specialist responsible for assisting with verifications and endorsements. Although the board received more staff for fiscal 2011 and 2012 than any other health occupations board, the additional staff does not appear to have fully addressed the impact of the considerable increase in licensees and certificate holders since fiscal 2006 especially given the backlog associated with processing

CMT applications. The additional personnel is also intended to facilitate the complaint resolution process, which, by BON's own measure, has not been timely.

Board Is Filling Vacant Positions

Currently, BON has four vacant positions in varying stages of the hiring process as follows:

- one administrative officer III vacant since January 2011;
- two administrative specialist II positions new for fiscal 2012; and
- one nursing program consultant/administrator II, which is filled on a trial basis until it is determined whether to retain the services of the acting employee.

BON also had a vacant position for an administrative officer I that had been vacant since February 2010, but that position was taken from the board because it had been vacant for over a year. BON indicated that it was delayed in filling the position because it reclassified the position and could not find a qualified applicant. Additionally, filling vacant positions has been delayed by BON having to request and wait for the approval of hiring freeze exemptions. BON should continue to work with the Department of Health and Mental Hygiene and the Department of Budget and Management to fill the remaining vacant positions in a timely fashion, particularly given the pressing need in processing CMT applications.

Board Should Consider Hiring Contractual Employees or Contracting Out Information Technology Projects

BON is transitioning its application function to a paperless process as discussed in **Chapter 3** of this report. To help with the transition, the board has indicated that additional staff is needed, including a programmer to assist with writing code and reports for the licensure database, two high level information technology employees to assist with technology for online applications, one employee to assist with answering online support emails, and one employee to assist with web development and design. However, some of the information technology projects likely are one-time assignments, and after the application process becomes paperless in July 2012, the information technology needs of BON may change. BON should consider hiring contractual employees to support the transition to a paperless system and make the positions regular on an as-needed basis.

Recommendation 17: Rather than request additional regular positions, the board should consider hiring contractual employees to complete the transition to a paperless application process.

More Data on Workflow and Workloads Is Necessary to Determine Whether Board's Staffing Sufficiently Meets Workload Needs

The board presented the Department of Legislative Services (DLS) with anecdotal evidence of a need for additional positions. Although the issues associated with processing CMT applications seem to support that contention, the two vacant positions intended to assist the CNA Division in processing applications for both CNAs and CMTs might be sufficient, in the long run, to handle the additional workload – particularly if other changes are made. Thus, DLS determined that it may be too soon to make a recommendation about the sufficiency of regular staffing because of a lack of data and pending certification and administrative changes.

Paucity of Data

During this evaluation, DLS requested that the board provide information concerning procedural manuals and workflow in order to determine workloads and evaluate the need for any personnel changes. In many instances, BON provided general information or procedures for one specific division of the board, but it could not produce sufficient detail for DLS to assess the overall staffing needs of the board. For example, BON could not provide DLS with the average time it takes to resolve a positive CHRC result. Such information is necessary to gauge the potential necessity of additional staff to assist in the CHRC process and should be collected.

Currently, the board collects data on the total number of applications and complaints and tracks complaints through Crystal Reports Viewer but does not track applications through each step of the application function. Additionally, DLS found that the board does not regularly run reports on the data it does collect to assess and manage ongoing workloads. The extent to which limited availability and use of data to routinely assess resource allocation contributed to the backlog of CMT applications is not clear. The board should begin to track applications in order to identify any problematic stages in the application process and regularly run reports that will help determine where additional staff might be most useful.

Upcoming Administrative and Certification Changes

The board continues to undergo significant changes that will impact its staffing needs. However, at this time, it is difficult to determine exactly what that impact will be. The following are examples of changes to the certification process and administrative changes to the board that will affect board staff:

- **The transition to a paperless application process** – The board is expected to complete its transition to a paperless application process by July 2012. The transition may impact the Information System Division's workload. BON could hire contractual employees to manage this transition, but the need for additional regular support in this area is not yet clear.

- **Transition to biennial licensure renewal** – The board has a healthy financial outlook as is discussed in **Chapter 5**, and has a sufficient fund balance to support some additional positions. However, the board will begin licensing on a biennial renewal schedule in 2013, which will cause a temporary bump in its fund balance. Additionally, biennial renewal will likely positively impact employee workloads.
- **The anticipated requirement for certified medication technicians (CMTs) to undergo CHRCs** – As discussed in **Chapter 3**, during the 2012 legislative session, BON anticipates seeking legislation to require CHRCs for CMTs. BON maintains that positive CHRC results are time consuming for staff and that the number of positive results for CMTs will be high. Though DLS has recommended that BON delay further consideration of this proposal, BON anticipates it will need two programming positions and one administrative specialist position to assist with the increase in positive results.

Until the board has filled its vacant positions, implemented measures to maintain and utilize more data to target its resources, and implemented the anticipated certification and administrative changes, the staffing needs of the board cannot be adequately assessed. Thus, further study is needed to determine appropriate distribution and levels of staff.

Recommendation 18: BON should contract with an independent entity to perform a personnel study to determine if and where additional staffing is needed. The study should be completed by October 1, 2013, and include an analysis of the board’s workload in its major functions of licensure, certification, and complaint resolution and should consider at a minimum (1) the number of applications and complaints the board receives; (2) the number of employees assigned to each step of each function; and (3) the amount of time an application or complaint remains at each step of each function. The personnel study should include an analysis of the impact of the online processing of licenses and certificates and the movement to biennial renewal on staffing needs. Finally, the study should make recommendations relating to the most effective use of current staff including cross-training and reassignment.

Administrative Issues

Delay in Appointing Board Members Affecting Representation of Licensees and Certificate Holders

Chapters 53 and 54 of 2010 changed the membership and qualifications for membership on the board. Specifically, the Acts add one registered nurse (RN) member to the board (this new RN member must have practiced acute care for at least five years, practice currently, and hold a bachelor of science degree in nursing); specify that one RN member must rotate among four advanced practice specialties; remove one nurse clinician member and instead add a

currently practicing RN who has practiced as a delegating nurse in a supervised group setting for at least five years; expand the educational requirements that qualify an individual for the nurse administrator member of the board; and require that at least one of the three licensed practical nurse (LPN) members on the board practice in a long-term care nursing facility.

Currently, the board has four members with expired terms. These members have not been reappointed, nor have replacement appointments been made. One of the purposes of Chapters 53 and 54 was to improve the representation on the board of the long-term care industry and, indirectly, nursing assistants and medication technicians. The long-term care industry has expressed concern that the purpose of the Acts is being undermined by the delay of the appointments. Also, the new RN member added by the Acts has not been appointed.

Recommendation 19: The board should work with the Department of Health and Mental Hygiene and the Governor's Appointments Office to reappoint or replace board members as required by Chapters 53 and 54 of 2010.

Role of Certified Nursing Assistant Advisory Committee Needs Clarification and Should Include Certified Medication Technician Representation

In 1998, the General Assembly established the Nursing Assistant Advisory Committee within the board to enable certified nursing assistants (CNAs) to have direct input into the certification and disciplinary processes. The 14-member advisory committee includes 6 CNAs, 3 RNs, and 1 LPN and is responsible for evaluating training programs, developing and recommending regulations, evaluating certification candidates, and reviewing complaints against CNAs or CMTs and making recommendations to the board for disciplinary action.

According to the board, the advisory committee meets every other month to review training programs and complaints. However, interviews with board members and staff revealed that several members need to be appointed to the advisory committee and that the role of the advisory committee is unclear. Considering the large number of CNAs and CMTs regulated by the board, there should be enough issues for consideration by the advisory committee to necessitate meeting at least once a month. The advisory committee is also required to submit an annual report to the board but has not done so since 2001. The advisory committee has broad statutory authority, but regulations do not currently specify the advisory committee's duties.

Although the advisory committee evaluates all certification applicants and complaints against CNAs and CMTs, and CMTs will soon comprise 25% of the total number of individuals regulated by the board, the membership of the advisory committee does not include a CMT.

Recommendation 20: Statute should be amended to alter the membership of the Nursing Assistant Advisory Committee to include at least one certified medication technician and to require the advisory committee to meet at least once a month. In addition, the board should fill vacancies on the advisory committee and adopt regulations clarifying the advisory committee's role.

Board Should Improve Communication with and among Staff

The board is authorized for 75 regular positions in fiscal 2012 that are organized into nine divisions. The board's office space is highly compartmentalized with separate offices for most employees. DLS observed little interaction among staff and subsequent interviews of staff verified this observation. When interviewed, board staff expressed that they generally enjoy their jobs and work well within their individual divisions. However, staff members expressed concern over a lack of cohesion between the divisions and feeling uninformed regarding board activities and decisions. DLS observed both a physical and collegial disconnect between the nursing staff and the nursing assistant staff that works on different floors. DLS finds that the lack of unity has reduced morale, which the board could improve by fostering a team atmosphere. The board discontinued its policy of holding monthly staff meetings and instead holds staff meetings on an as-needed basis.

Recommendation 21: The board should reinstate its policy of holding monthly staff meetings either with the entire staff or with division directors in order to enhance communication with and among board personnel.

Board Should Conduct Cross-training of Employees and Provide Better Documentation of Board Functions

On several occasions during the sunset review process, DLS had difficulty obtaining information from BON. In many instances, it was unclear from whom information could be obtained or if it even was available.

With a few exceptions, staff members are not cross-trained to perform another staff member's job or function. For example, when certain information was only available from one individual, the review team had to wait for that individual to return from vacation. If a staff member were to leave quickly or have an unexpected absence from work, the remaining staff would have a difficult time completing certain tasks that had previously been handled by only one person.

There are no comprehensive policy and procedure manuals that describe the responsibility of each function and the assignment of tasks within that function. The main functions of the board are licensure and certification, including initial and renewal applications, and complaint resolution. These functions generally cross over several divisions of the board.

The lack of manuals made it difficult for DLS to determine the step-by-step processes the board uses to fulfill its functions. The board should have a clearly written set of guidelines for each function. For example, a policy and procedure manual for the licensure function would provide each step of the application process from when the board receives an application to when a license is issued and would include the paper and online processes, the initial and renewal steps, and the differences between endorsement and exam application processes.

Recommendation 22: The board should conduct cross-training for employees, prepare more comprehensive documentation of board functions through the development of policy and procedure manuals, and update its organizational chart and job descriptions.

Board Has No Automated System to Track Applications

The board does not have sufficient technology to track the status of applications. Applicants often voice frustration about not being able to easily determine the status of their application. For example, BON cannot run a report to determine how many and which applications have been pending for a certain amount of time. Thus, board staff must respond to complaints from applicants concerning a delay in getting their license or certificate rather than work proactively to move applications through the licensure or certification process. As noted earlier, long delays have occurred in the application process for CMTs, which does not currently require CHRC matches. BON's manual process of matching CHRC results to other applications can also result in unnecessary delays. The board reports that it receives at least two calls a week from legislators voicing constituent concerns regarding delays in licensure or certification in addition to the numerous direct calls the board receives from applicants regarding the status of their application.

Additionally, the board does not track how long an application has remained at each step in the application process. Tracking these data would allow the board to determine whether applications tend to stall at one stage more often than another. Such determinations are necessary for the board to make its application process more efficient and in order to support the board's assertions that it needs additional staff.

Recommendation 23: The board should develop an automated system for tracking applications that can generate reports on how long applications have been in the licensing system and how long the applications remain at each step of the licensing process.

Board Annual Report Should Be Expanded and Submitted to the General Assembly

Section 8-205(a)(8) of the Health Occupations Article requires the board to submit an annual report to the Secretary of Health and Mental Hygiene and the Governor. The report is not currently distributed to the General Assembly. In recent years, rather than submit a specific

annual report, the board has instead submitted its budget hearing testimony. The board's fiscal 2011 budget hearing testimony included data on the number of licensees and certificate holders governed by the board, online processing of renewals, and CHRC results. The testimony also included an overview of issues related to staffing, initial applications, final orders, legislative and regulatory activities, major regulatory changes, and technology upgrades.

While the board has regularly submitted this information, the content of the annual report could be improved, particularly by including additional data beyond the basic MFR goals currently used by the board. In particular, the board should include specific data, calculated on a fiscal-year basis, on the number of new and renewal licenses and certificates issued, the number of positive and negative CHRC results received, the number of individuals denied initial and renewal certification or licensure due to positive CHRC results, the number of individuals denied certification or licensure due to other reasons, the number of new complaints received, the number of complaints carried over from one year to another, the most common grounds for complaints, and the number and types of disciplinary actions taken. Given that the board regulates the vast majority of health occupations professionals in the State, distribution of the annual report should be expanded to include the General Assembly.

Recommendation 24: Statute should be amended to require the board to submit its annual report to the General Assembly, in addition to the Secretary of Health and Mental Hygiene and the Governor. The report should include specific data calculated on a fiscal-year basis in order to provide a clearer picture of the workload of the board.

Chapter 7. Conclusion

The members and staff of the State Board of Nursing (BON) work to fulfill the board's statutory duties. The full board meets on a monthly basis, and both board members and staff attend additional meetings throughout each month including weekly meetings on new complaints, settlement conferences, rehabilitation proceedings, and various workgroups. All concerned appear to be dedicated to carrying out the mission of the board to protect the public.

The board has faced several challenges as the number of licensees and certificate holders it regulates has rapidly increased while its staffing resources have increased at a much slower rate. Additionally, the requirement for criminal history records checks (CHRCs) as a condition of licensure or certification has had a significant impact on the board's responsibilities. While the board has responded to these challenges to the best of its ability, additional improvements need to be made to the board's overall organization with emphasis on the collection of data.

A recurring theme throughout the sunset evaluation process was a lack of organization and cohesiveness at the board. The Department of Legislative Services (DLS) observed an atmosphere of disarray from the format of the board's website to its process for resolving positive CHRC results. The board generally satisfies its statutory mandates but in a disjointed manner. Nowhere is the organizational deficiency more evident than in the board's data collection and maintenance. When DLS requested information, it was often unclear among board staff as to which staff member had access to the information and could provide it to DLS. In addition, the board's lack of uniform data collection and its policy of running data only on request led to lengthy delays in providing information throughout the evaluation. Data provided were often inconsistent with other information collected, resulting in significant revisions as this report was being drafted. The board clearly regulates an impressive number of individuals; however, the scale of the board's responsibilities only underscores the need for better organization.

As discussed in **Chapter 6**, DLS recommends that the board contract with an independent entity to perform a personnel study. This study will help the board to identify issues within the major functions of the board and determine the appropriate use of existing staff and if and how additional staff would be most beneficial.

DLS has observed through interviews and board meetings that the board is capable and motivated to improve board operations. Throughout this report, DLS has recommended several administrative changes. DLS finds that these changes will make the board run more efficiently and improve the board's relationship with the individuals it regulates and the general public.

Recommendation 25: Legislation should be enacted to extend the termination date for the board by 10 years to July 1, 2023. Additionally, uncodified language should be adopted to require the board to report, by October 1, 2013, to the Senate Education, Health, and Environmental Affairs and House Health and Government Operations committees on the implementation status of nonstatutory recommendations made in this report. In

particular, the board should report on how it has improved its use of data collection and tracking for the licensure, certification, and complaint resolution processes.

Appendix 1. Draft Legislation

Bill No.: _____

Requested: _____

Committee: _____

Drafted by: Hopwood

Typed by: Carol

Stored – 10/28/11

Proofread by ☒ _____Checked by ☒ _____By: **Leave Blank**

A BILL ENTITLED

1 AN ACT concerning

2 **State Board of Nursing – Sunset Extension and Revisions**

3 FOR the purpose of continuing the State Board of Nursing in accordance with the
 4 provisions of the Maryland Program Evaluation Act (sunset law) by extending
 5 to a certain date the termination provisions relating to the statutory and
 6 regulatory authority of the Board; requiring that an evaluation of the Board
 7 and the statutes and regulations that relate to the Board be performed on or
 8 before a certain date; requiring the Board to submit a certain annual report to
 9 the General Assembly; specifying the data that must be included in a certain
 10 annual report; altering a certain requirement related to the application for a
 11 license to practice registered nursing or licensed practical nursing; altering a
 12 certain requirement related to the application for certification as a certified
 13 nursing assistant; altering the membership of a certain advisory committee;
 14 requiring a certain advisory committee to meet at least once during a certain
 15 time period; requiring the Board to contract with an independent entity to
 16 perform a certain personnel study to be completed on or before a certain date;
 17 requiring the Board to report to certain committees of the General Assembly on
 18 the implementation and use of certain sanctioning guidelines on or before a
 19 certain date; requiring the Board to report to certain committees of the General
 20 Assembly on the implementation of certain recommendations; requiring the
 21 report to include certain information and a certain plan; making a stylistic
 22 change; and generally relating to the State Board of Nursing.

 EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



BY repealing and reenacting, with amendments,
Article – Health Occupations
Section 8–205(a)(8), 8–304, 8–6A–05(c)(2), 8–6A–13, and 8–802
Annotated Code of Maryland
(2009 Replacement Volume and 2011 Supplement)

BY repealing and reenacting, without amendments,
Article – State Government
Section 8–403(a)
Annotated Code of Maryland
(2009 Replacement Volume and 2011 Supplement)

BY repealing and reenacting, with amendments,
Article – State Government
Section 8–403(b)(40)
Annotated Code of Maryland
(2009 Replacement Volume and 2011 Supplement)

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

Article – Health Occupations

8–205.

(a) In addition to the powers and duties set forth elsewhere in this title, the
Board has the following powers and duties:

(8) To submit [an annual report] to the Governor, [and] THE
Secretary, AND, IN ACCORDANCE WITH § 2–1246 OF THE STATE GOVERNMENT
ARTICLE, THE GENERAL ASSEMBLY, AN ANNUAL REPORT THAT INCLUDES THE
FOLLOWING DATA CALCULATED ON A FISCAL YEAR BASIS:

(I) THE NUMBER OF INITIAL AND RENEWAL LICENSES AND
CERTIFICATES ISSUED;

(II) THE NUMBER OF POSITIVE AND NEGATIVE CRIMINAL HISTORY RECORDS CHECKS RESULTS RECEIVED;

(III) THE NUMBER OF INDIVIDUALS DENIED INITIAL OR RENEWAL LICENSURE OR CERTIFICATION DUE TO POSITIVE CRIMINAL HISTORY RECORDS CHECKS RESULTS;

(IV) THE NUMBER OF INDIVIDUALS DENIED LICENSURE OR CERTIFICATION DUE TO REASONS OTHER THAN A POSITIVE CRIMINAL HISTORY RECORDS CHECK;

(V) THE NUMBER OF NEW COMPLAINTS RECEIVED;

(VI) THE NUMBER OF COMPLAINTS CARRIED OVER FROM YEAR TO YEAR;

(VII) THE MOST COMMON GROUNDS FOR COMPLAINTS; AND

(VIII) THE NUMBER AND TYPES OF DISCIPLINARY ACTIONS TAKEN BY THE BOARD;

8–304.

To apply for a license to practice registered nursing or licensed practical nursing, an applicant shall:

(1) [(i)] Submit to a criminal history records check in accordance with § 8–303 of this subtitle; [or

(ii) Have completed a criminal history records check in accordance with § 8–303 of this subtitle through another state board of nursing within the 5 years preceding the date of application;]

(2) Submit to the Board:

(i) An application on the form that the Board requires;

(ii) Written, verified evidence that the requirement of item (1) of this subsection is being met or has been met; and

(iii) Written, verified evidence of completion of the appropriate education requirements of § 8–302 of this subtitle; and

(3) Pay to the Board the application fee set by the Board.

8–6A–05.

(c) (2) Subject to paragraph (1) of this subsection, an applicant for certification as a certified nursing assistant shall submit to the Board:

(i) [1.] A criminal history records check in accordance with § 8–303 of this title; [or

2. Evidence of completion of a criminal history records check in accordance with § 8–303 of this title through another state board of nursing within the 5 years preceding the date of application;] and

(ii) On the form required by the Board, written, verified evidence that the requirement of item (i) of this paragraph is being met or has been met.

8–6A–13.

(a) The Board shall appoint an advisory committee consisting of at least [14] 15 members appointed by the Board.

(b) Of the [14] 15 committee members:

(1) Six shall be nursing assistants:

(i) One shall be an acute care nursing assistant;

(ii) One shall be a home care nursing assistant;

(iii) One shall be a long-term care nursing assistant;

(iv) One shall be an adult medical day care nursing assistant;

(v) At least one of the nursing assistant members shall be a member of a union; and

(vi) One shall be an independent contractor;

(2) Three shall be registered nurses:

(i) One shall be an acute care registered nurse;

(ii) One shall be a home care registered nurse; and

(iii) One shall be a long-term care registered nurse;

(3) One shall be an administrator from a licensed health care facility;

(4) One shall be a licensed practical nurse;

(5) One shall be an individual who teaches a nursing assistant course;

(6) One shall be a consumer member who has received care, or has a family member who has received care from a nursing assistant; [and]

(7) One shall be a representative of the Department; AND

(8) ONE SHALL BE A CERTIFIED MEDICATION TECHNICIAN.

(c) The Board shall appoint an alternate for each of the three nursing assistant members in the event that the nursing assistant member is unable to discharge the duties of the committee.

(d) An advisory committee member shall serve a term of 4 years.

(E) THE ADVISORY COMMITTEE SHALL MEET AT LEAST ONCE A MONTH.

[(e)] (F) The advisory committee shall:

(1) Evaluate training programs and make recommendations for approval by the Board;

(2) Develop and recommend regulations to enforce the provisions of this subtitle;

(3) Evaluate candidates as required and recommend action to the Board;

(4) Review investigations of complaints against nursing assistants or medication technicians and make recommendations to the Board for disciplinary action;

(5) Keep a record of its proceedings; and

(6) Submit an annual report to the Board.

8–802.

Subject to the evaluation and reestablishment provisions of the Program Evaluation Act, the provisions of this title and of any rule or regulation adopted under this title shall terminate and be of no effect after July 1, [2013] **2023**.

Article – State Government

8–403.

(a) On or before December 15 of the 2nd year before the evaluation date of a governmental activity or unit, the Legislative Policy Committee, based on a preliminary evaluation, may waive as unnecessary the evaluation required under this section.

(b) Except as otherwise provided in subsection (a) of this section, on or before the evaluation date for the following governmental activities or units, an evaluation shall be made of the following governmental activities or units and the statutes and regulations that relate to the governmental activities or units:

(40) Nursing, State Board of (§ 8–201 of the Health Occupations Article: July 1, [2012] **2022**);

SECTION 2. AND BE IT FURTHER ENACTED, That:

(a) The State Board of Nursing shall contract with an independent entity to perform a personnel study to determine the necessity and allocation of additional staff.

(b) The study required under subsection (a) of this section shall:

(i) 1. include an analysis of the workload of the Board related to its licensure, certification, and complaint resolution functions; and

2. consider at a minimum the number of applications and complaints received by the Board, the number of employees assigned to each step of each function, and the amount of time an application or complaint remains at each step of each function;

(ii) include an analysis of the impact on staffing needs of:

1. the online processing of licenses and certificates; and

2. the movement to biennial renewal of licenses; and

(iii) make recommendations on the most effective use of existing staff, including cross training and reassignment.

(c) The study required under subsection (a) of this section shall be completed on or before October 1, 2013.

SECTION 3. AND BE IT FURTHER ENACTED, That, on or before December 1, 2012, the State Board of Nursing shall report to the Senate Education, Health, and Environmental Affairs Committee and the House Health and Government Operations Committee, in accordance with § 2–1246 of the State Government Article, on the implementation and use of the sanctioning guidelines required by Chapters 533 and 534 of the Acts of the General Assembly of 2010.

SECTION 4. AND BE IT FURTHER ENACTED, That:

1 (a) On or before October 1, 2013, the State Board of Nursing shall report to
2 the Senate Education, Health, and Environmental Affairs Committee and the House
3 Health and Government Operations Committee, in accordance with § 2–1246 of the
4 State Government Article, on the implementation of nonstatutory recommendations
5 contained in the sunset evaluation report dated October 2011.

6 (b) The report required under subsection (a) of this section shall include:

7 (1) information on how the Board has improved its use of data
8 collection and tracking for the application and complaint resolution processes; and

9 (2) the Board’s plan to implement the findings of the personnel study
10 required under Section 2 of this Act.

11 SECTION 5. AND BE IT FURTHER ENACTED, That this Act shall take effect
12 June 1, 2012.

Appendix 2. Written Comments of the State Board of Nursing



Warren G. Deschenaux, Director
Department of Legislative Services
90 State Circle
Annapolis, MD 21401-1991

October 31, 2011

RE: Sunset Review: Evaluation of the Maryland Board of Nursing, October, 2011

Dear Mr. Deschenaux:

The Maryland Board of Nursing offers the following responses to the recommendations in the 2011 Sunset Review and Evaluation of the Board.

Recommendation 1:

The board should continue to prioritize certification of medication technicians; any statutory or regulatory changes related to the certification of medication technicians should be based on the findings of the report required by Chapter 123 of 2011, particularly the required staffing analysis. The board should also include the provider community when developing policy related to the certification process and training requirements for medication technicians.

The Board concurs with Recommendation 1.

Recommendation 2:

The board should monitor any staff efficiencies related to the online licensure process and the movement to biennial licensure and reallocate staff accordingly. The board should also use its customer service survey to monitor customer satisfaction with both processes.

The Board concurs with Recommendation 2.

Recommendation 3:

The board should maintain annual data on the number of applicants for licensure as an RN or LPN and certification as a CNA that are denied licensure or certification based on positive criminal

history records check results. Information should also be maintained on the number of applicants for certification as a CMT that are denied certification based on self-disclosure of criminal history.

The Board concurs with Recommendation 3.

Recommendation 4:

The board should develop policy manuals on how the board handles positive criminal history records check results. These policies should be shared with board members and staff and published on the board's website.

The Board is reluctant to "develop policy manuals on how the board handles positive criminal history records check results" because these matters are addressed in the Nurse Practice Act and the actions taken by the Board regarding any positive criminal histories are discretionary.

The Board only has authority to take disciplinary action against those applicants, initial or renewal, whose criminal histories involve a conviction, guilty plea, or nolo contendere plea to a felony or a crime of moral turpitude. See Md. Health Occ. Code Ann., § 8-316(a)(4); Md. Health Occ. Code Ann. § 8-6A-10(a)(4). Thus, an applicant with a criminal history not involving a felony or a crime of moral turpitude will not be subject to investigation because the Board does not have the authority take any adverse action regarding their respective application, license, or certificate.

If the criminal history records check indicates a conviction, guilty plea, or nolo contendere plea to a felony crime or a crime of moral turpitude, the Nurse Practice Act requires that the Board consider several factors in determining whether or not to proceed with disciplinary action. For all initial and renewal license and certificate applicants the Nurse Practice Act requires that:

On receipt of an applicant's positive criminal history record information forwarded to the Board, in accordance with § 8-303 of the Nurse Practice Act, the Board is required to consider the following in making a determination to license, certify or deny an applicant:

- (i) The age at which the crime was committed;
- (ii) The circumstances surrounding the crime;
- (iii) The length of time that has passed since the crime;
- (iv) Subsequent work history;
- (v) Employment and character references; and
- (vi) Other evidence that demonstrates whether the applicant poses a threat to the public health or safety.

Because the consideration of a criminal history of an applicant is statutorily left to the discretion of the Board, the Board believes that the implementation of a "policy manual" would be unnecessary. However, an algorithm will be developed defining the process that will be consistently applied.

Recommendation 5:

The board should delay seeking legislation to require certified medication technicians to submit to criminal history records checks until the board has (1) implemented its online certification process for medication technicians in a manner that results in the timely processing of certificates; (2) analyzed the effectiveness in protecting the public of the current criminal history self-disclosure policy for medication technicians; (3) determined whether criminal history records checks are necessary in light of the self-disclosure policy; and (4) made any personnel changes relating to the certification of medication technicians as a result of the personnel study recommended by this report. If and when legislation is introduced to require medication technicians to submit to criminal history records checks, the board should consult with the provider and advocacy communities that employ and represent medication technicians and take into consideration current statutory requirements related to criminal history records checks for adult dependent care programs.

The Board concurs with Recommendation 5.

Recommendation 6:

Statute should be amended to remove the authorization for applicants for licensure as an RN or LPN and applicants for certification as a nursing assistant to be waived from a criminal history records check if they have completed such a check through another state board of nursing within the five years preceding the date of their application. Such waivers cannot be granted because obtaining the criminal history records information from other states violates federal law.

The Board concurs with Recommendation 6.

Recommendation 7:

The board, in consultation with the Office of the Attorney General, should develop a policy manual related to the complaint resolution process, including guidelines to be used by complaint review committees and in settlement conferences.

The Board concurs with Recommendation 7.

Recommendation 8:

BON should continue to assess its backlog and, as necessary, hold additional hearings.

The Board concurs with Recommendation 8.

Recommendation 9:

Board members should meet with all investigative staff to discuss their expectations from investigations, and work with the nurse investigators to developing training for non-nurse investigators in order to prevent future delays.

The Board concurs with Recommendation 9.

Recommendation 10:

The board should report again to the Senate Education, Health, and Environmental Affairs and House Health and Government Operations committees on its implementation and use of

sanctioning guidelines by December 1, 2012 (by which time the board is expected to have been using the guidelines for about one year).

The Board concurs with Recommendation 10.

Recommendation 11:

The board should utilize its complaint tracking capabilities to develop, run, and maintain a catalog of complaint data reports on a regular basis and use the results to make staffing and automation changes to improve the overall complaint resolution process.

The Board concurs with Recommendation 11.

Recommendation 12:

BON should ensure that ACD operators have the appropriate training to handle frequently asked questions and that all staff who interact with the public are trained on phone etiquette for diffusing tense situations.

The Board concurs with Recommendation 12.

Recommendation 13:

The board should include all public board meetings under the "Public Meetings" link and should make the entire website easier to follow by placing everything needed for RNs under one link, LPNs under another link, and so on.

The Board concurs with Recommendation 13.

Recommendation 14:

The board should ensure that posted disciplinary information is accurate, consistent, and up to date. In addition, the board should include descriptions of what information is available and directions as to how to access the information. The board should consider eliminating the "MBN Alert" and "Public Order" links and post disciplinary action by date with direct links to the public orders and include direct links to public orders in under the "Look-up a Licensee" link.

The Board concurs with Recommendation 14.

Recommendation 15:

The board should add questions to the "Customer Satisfaction Survey" that are specific to the interaction with BON staff. Further, the board should encourage more responses to the customer service survey by including prompts to complete the survey after the submission of an application or complaint and requiring ACD operators and staff to inform licensees, certificate holders, or the public about the online survey.

The Board concurs with Recommendation 15.

Recommendation 16:

The board should reestablish an online newsletter as an opportunity to enhance communications between the board, its licensees and certificate holders, and the public.

The Board concurs with Recommendation 16.

Recommendation 17:

Rather than request additional regular positions, the board should consider hiring contractual employees to complete the transition to a paperless application process.

The Board concurs with Recommendation 17.

Recommendation 18:

BON should contract with an independent entity to perform a personnel study to determine if and where additional staffing is needed. The study should be completed by October 1, 2013, and include an analysis of the board's workload in its major functions of licensure, certification, and complaint resolution and should consider at a minimum (1) the number of applications and complaints the board receives; (2) the number of employees at each step of each function; and (3) the amount of time an application or complaint remains at each step of each function. The personnel study should include an analysis of the impact of the online processing of licenses and certificates and the movement to biennial renewal on staffing needs. Finally, the study should make recommendations relating to the most effective use of current staff including cross-training and reassignment.

The Board concurs with Recommendation 18.

Recommendation 19:

The board should work with the Department of Health and Mental Hygiene and the Governor's Appointments Office to reappoint or replace board members as required by Chapters 53 and 54 of 2010.

The Board concurs with Recommendation 19.

Recommendation 20:

Statute should be amended to alter the membership of the Nursing Assistant Advisory Committee to include at least one certified medication technician and to require the advisory committee to meet at least once a month. In addition, the board should fill vacancies on the advisory committee and adopt regulations clarifying the advisory committee's role.

The Board concurs with Recommendation 20.

Recommendation 21:

The board should reinstate its policy of holding monthly staff meetings either with the entire staff or with division directors in order to enhance communication with and among board personnel.

The Board concurs with Recommendation 21.

Recommendation 22:

The board should conduct cross-training for employees, prepare more comprehensive documentation of board functions through the development of policy and procedural manuals, and update its organizational chart and job descriptions.

The Board concurs with Recommendation 22, to the extent possible, within the restraints required for security of the data base.

Recommendation 23:

The board should develop an automated system for tracking applications that can generate reports on how long applications have been in the licensing system and how long the applications remain at each step of the licensing process.

The Board concurs with Recommendation 23, but believes it will be moot after all applications are on line.

Recommendation 24:


Statute should be amended to require the board to submit its annual report to General Assembly, in addition to the Secretary of Health and Mental Hygiene and the Governor. The report should include specific data calculated on a fiscal-year basis in order to provide a clearer picture of the workload of the board.

The Board concurs with Recommendation 24.

Recommendation 25:

Legislation should be enacted to extend the termination date for the board by 10 years to July 1, 2023. Additionally, uncodified language should be adopted to require the board to report, by October 1, 2013, to the Senate Education, Health, and Environmental Affairs and House Health and Government Operations committees on the implementation status of nonstatutory recommendations made in this report. In particular, the board should report on how it has improved its use of data collection and tracking for the application and complaint resolution processes.

The Board concurs with Recommendation 25.


Nancy Adams, MBA, RN
President

Sincerely,


Patricia A. Noble, MSN, RN
Executive Director

cc: Secretary Sharfstein
Patrick Dooley
Marie Grant
Sara Albert
Karen Hopwood
Lisa Simpson