Sunset Review: Evaluation of the State Board of Physicians and the Related Allied Health Advisory Committees

Presentation to the
House Health and Government Operations Committee
Delegate Peter A. Hammen, Chairman

Health Facilities and Occupations Subcommittee
Delegate Eric M. Bromwell, Chairman

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Presentation Overview

- Context and methodology of report
- Licensing overview
- Focus on compliance with statutory requirements, prior sunset recommendations, and issues related to the allied health advisory committees
- Report includes 46 total recommendations, but presentation focuses on findings and recommendations relating to:
  - the complaint resolution process, the board's fiscal condition and licensure fee setting process, the activities of the board's allied health advisory committees, and extension of the board's termination date
- Conclusion

Context and Methodology

- State Board of Physicians (MBP) last underwent full sunset evaluation in 2005; update report in 2006
- Update concluded that the board had made some progress, but complaint caseloads remained too high and resolution time was too lengthy
- Chapter 539 of 2007 extended the board's termination date by six years to July 1, 2013, and required a direct full evaluation by July 1, 2012
- To conduct this evaluation, Department of Legislative Services (DLS) staff reviewed numerous documents and files, conducted interviews, and attended board meetings
- Overall, DLS observed positive trends, but significant challenges continue to face the board

State Board of Physicians

- 21 member board (13 physicians, 5 consumers, 1 physician assistant, 1 Department of Health and Mental Hygiene (DHMH) representative, and 1 public member knowledgeable in risk management or quality assurance)

- Regulates more than 43,000 physicians, unlicensed medical practitioners, and allied health practitioners

- Core functions are issuing initial and renewal licenses, investigating complaints, and taking disciplinary action against individuals found to be in violation of applicable statute and regulations

Licensing Overview

- In fiscal 2010 and 2011 combined, the board:
  - issued 3,135 new physician licenses and renewed another 25,297 physician licenses
  - issued 1,908 new allied health practitioner licenses and renewed another 10,893
- The board consistently meets its Managing for Results performance goals for licensure processing

Complaint Resolution Overview

- Complaint resolution is one of the most critical functions of the board
- Focus on four complaint resolution issues:
  - the complaint backlog and the timeliness of complaint resolution
  - sanctioning guidelines
  - public disclosure of charges
  - the lack of guidelines for reopening sexual misconduct cases

Complaint Backlog and Timeliness of Complaint Resolution

- The number of cases closed with formal actions grew from 52 in fiscal 2007 to 136 in fiscal 2011
- The number of complaints pending from a previous year grew from 572 in fiscal 2007 to 739 in fiscal 2011
- The total number of cases closed dropped from 957 in fiscal 2010 to 892 in fiscal 2011

Complaint Backlog and Timeliness of Complaint Resolution (Cont.)

	September 2002-July 2006		January 2007-June 2011		
	# of Cases	Avg. # of Days Taken	# of Cases	Avg. # of Days Taken	Percent Change
Date Case Opened to Vote to Charge and Transmittal to OAG	166	566	221	640	13%
Date Case Transmitted to OAG to Formal Charges Signed/Executed	142	151	221	176	17%
Date Formal Charges Signed to Board Consent Order			164	153	
Date Formal Charges Signed to Board Final Order			49	367	
Date Formal Charges Signed to Final Board Action	105	202	213	198	-2%
Date Case Opened to Final Board Action	105	955	221	1,013	6%

OAG: Office of the Attorney General

Complaint Backlog and Timeliness of Complaint Resolution (Cont.)

- Length of every part of the complaint resolution process, with one exception, continues to grow

- Issues with the data kept by the board prohibited DLS from developing a completely accurate picture of the timeliness of complaint resolution

- Board has more compliance analysts with lower caseloads than during the last sunset evaluation

Recommendation 9 (pg. 46): Uncodified language should be adopted requiring MBP and DHMH jointly to develop and implement a strategy for reducing the backlog of complaint cases by December 31, 2012. Also, MBP should be required to include the strategy, as well as information regarding the effect of the strategy on the backlog and complaint resolution time, in a subsequent follow-up report that is submitted to DLS

Sanctioning Guidelines

- Recommendations that MBP adopt guidelines date back to 2003

- Chapters 533 and 534 of 2010 require **all** health occupations boards to adopt sanctioning guidelines

- Board draft guidelines would apply only to physicians and not to allied health professionals

Recommendation 12 (pg. 50): Budget bill language should be adopted during the 2012 legislative session to withhold funds from MBP until the board promulgates in regulations sanctioning guidelines for physicians and allied health professionals, as required by Chapters 533 and 534 of 2010

Disclosure of Charges

- Statute requires board to disclose filing of charges to the public
- In practice, board only discloses filing of charges to a complainant (if the complainant contacts the board for the information) and in response to a request for written verification of licensure
- From fiscal 2007 through 2010, charges were issued in only 6% of total complaints (<0.02% of physician licensees)
- No parallel requirement regarding allied health licensees

Recommendations 14 and 15 (pg. 51): Statute should be amended to require MBP to disclose the filing of charges and notice of initial denial of license application for physicians and allied health professionals on the licensee profiles with a disclaimer stating that the charging document does not indicate a final finding of guilt by the board

Lack of Guidelines for Sexual Misconduct Cases

- Board lacks consistency regarding how many similar complaints need to be received before closed cases are reopened
- Board lacks guidelines regarding when to reopen closed sexual misconduct cases
- Advisory letter does not state that a case may be reopened and charges may be issued if a pattern of behavior becomes apparent
- When a case is reopened, a new case number is assigned

Recommendation 17 (pp. 52 and 53): MBP should (1) adopt guidelines for reopening cases, especially sexual misconduct cases; (2) revise the advisory letter; (3) track sexual misconduct cases; and (4) reopen all relevant cases using the original case number

Fiscal Condition of the Board

- MBP has implemented changes to improve certain aspects of board operations, but the fiscal condition of the board warrants further attention

- Board revenues consistently exceed board expenditures

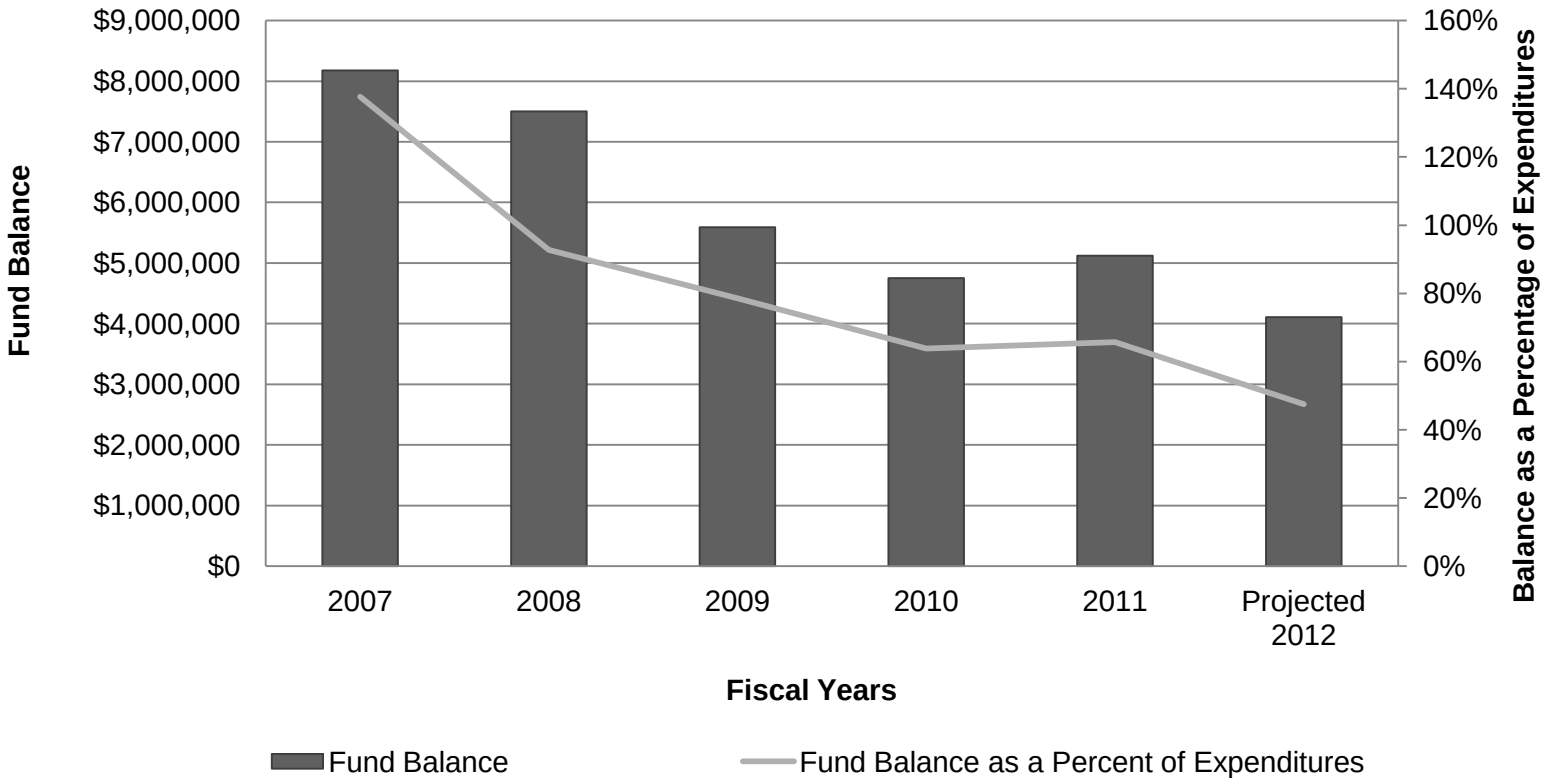
  – In fiscal 2011, board revenues totaled $10.5 million, while board expenditures were $7.8 million

- MBP began accruing a fund balance in 2001, and the balance has consistently remained above the recommended 20% threshold for health occupations boards of its size

- MBP's fund balance has made it a target for fund balance transfers

  – From fiscal 2008 through 2011, a total of $4.7 million has been transferred to the general fund through the Budget Reconciliation and Financing Act (BRFA)

MBP Fund Balance: Fiscal 2007-2011



Physician Licensing Fees

	Fee Levels in COMAR	Fee Levels Charged by The Board
Initial Licensure		
Licensure Application Fee	$260	$310
Physician License Fee	480	480
Licensure Renewal		
Biennial License Renewal	462	514
Licensure Reinstatement		
Reinstatement (if physician was eligible for renewal in the previous year)	650	700
Reinstatement (if physician was not eligible for renewal in the previous year)	550	600

Board Fee-charging Practices

- Board has continued to charge the additional $50 for physician licensure to support peer review and physician rehabilitation activities
  - Statutory authority to charge a separate fee was repealed
  - Board has not assessed fee structure to determine appropriate level of fees charged

- From fiscal 2007 through 2011, the board collected $3.5 million associated with these fees (equivalent to 74% of funds transferred through the BRFA over the same time period)

Recommendation 20 (pg. 60): MBP should be required to assess its fee-charging practices, develop a long-term fiscal plan, and submit a report to the Department of Legislative Services by December 31, 2012, so that these issues can be factored into consideration of the board's operating budget during the 2013 legislative session

Fee Levels for Physicians and Allied Health Professionals

Recommendation 3 (pg. 24): The board should amend its regulations to reflect current fees

Recommendation 4 (pg. 25): Statute should be amended to repeal the requirement that the board assess physician assistants a fee to fund the rehabilitation program for physicians and allied health professionals

Allied Health Licensure Fees

	FY 2010	FY 2011	Totals
Allied Health Revenues	$261,066	$1,197,720	**$1,458,786**
Allied Health Expenditures	653,357	610,423	**1,263,780**
Fund Balance Attributable to Allied Health Revenues	($392,291)	$587,297	**$195,006**

Notes: Due to the board's budgeting practices, portions of revenues attributable to allied health practitioners are estimated based on licensure figures. Likewise, portions of expenditures are estimated on a per-employee basis.

Allied Health Licensure Fees (Cont.)

- Board does not budget the Allied Health Unit under a separate program (as it does with the board's legal services)

- Fee revenues from allied health professionals are not reported separately

Recommendation 21 (pg. 61): To enable the board to better approximate the cost associated with allied health expenditures, MBP should budget allied health expenditures under a separate program code and report licensure revenues for physician assistants and radiographers with revenues derived from other allied health professionals

Board Oversight of Allied Health Professionals

- Board currently has oversight over 8 allied health professions with more than 13,000 licensees
- New professions regulated by board:
  - radiology assistance (added in 2008)
  - athletic training (added in 2009)
  - perfusion (added in 2011)
- Six allied health advisory committees with 49 total members

Allied Health Advisory Committees

- Physician Assistant Advisory Committee
- Radiation Therapy, Radiography, Nuclear Medicine Technology Advisory, and Radiology Assistance Committee (Rad Tech Committee)
- Respiratory Care Professional Standards Committee
- Polysomnography Professional Standards Committee
- Athletic Trainer Advisory Committee
- Perfusion Advisory Committee (October 2012)

Noteworthy Allied Health Issues

- Method of setting licensure fees
- Advisory committee involvement in complaint resolution
- Statutory and regulatory issues:
  - athletic trainers
  - physician assistants (PAs)

Allied Health
Licensure Fee Levels Differ

Profession	Licensees	Initial	Renewal	Reinstatement	Delegation Agreement/ Protocol	Median Annual Wage
Physician Assistant	2,866	$200	$135	$200	$200	$81,230
Radiologist Assistant	4	150	135	150		103,000
Radiation Therapist	373	150	135	150		72,910
Nuclear Medicine Technologist	732	150	135	150		66,660
Radiographer	5,773	150	135	150		52,210
Respiratory Care Practitioner	2,847	200	150	200		52,200
Polysomnographic Technologist	131	200	150	200		47,000
Athletic Trainer	600	200	135	200	100	39,640

Method of Setting Allied Health Licensure Fees

Recommendation 22 (p. 64): Although the board incurs numerous start-up costs when it begins to license a new profession, the board should examine its schedule of fees for allied health professionals and, if necessary, adjust licensure fees to more accurately reflect the ongoing cost of licensure amongst the various allied health professionals

Allied Health Advisory Committee Involvement in Complaint Resolution

- Allied health committees not involved in investigation or resolution of complaints
- Committee members interested in greater involvement in resolving complaints against peers

Recommendation 5 (pg. 36): The board should recommend measures to increase the involvement of allied health committees in complaint resolution and licensee discipline, including whether:

- **committees should handle all allied health complaint resolution functions currently handled by board members; or**
- **committee members should perform certain complaint resolution functions**

Athletic Trainers

- Athletic trainers must have a written evaluation and treatment (E&T) protocol with a licensed physician
- Some athletic trainers receive referrals from a nonsupervising physician or other licensed health care practitioner
- Board has proposed regulations to allow such referrals
- Statute does not address whether and how athletic trainers may accept referrals from other health care practitioners

Recommendation 43 (pg. 89): Statute should be amended to:

- **clarify that a supervising physician may authorize, in an E&T protocol, an athletic trainer to accept an outside referral from a nonsupervising physician or licensed health care practitioner;**
- **specify the licensed health care providers from whom an athletic trainer may accept referrals; and**
- **clarify the acceptable mechanisms that a physician may use to supervise an athletic trainer**

Physician Assistants and Advanced Duties

- Each PA must enter into a delegation agreement with a supervising physician

- Board must approve a delegation agreement that authorizes a PA to perform an “advanced duty,” although there is little to guide a PA in determining what is an “advanced duty”

- DLS identified concerns about the process for determining what constitutes an advanced duty, certain procedures that have been deemed to be advanced, and the number of successful procedures a PA must perform to demonstrate sufficient training

Recommendation 44 (pg. 91): The board should adopt regulations for determining (1) what constitutes an advanced duty; and (2) how many successful procedures a physician assistant must perform to be deemed able to safely perform a delegated medical act

Failure to Adopt Regulations as Required by Law

- Administrative Procedure Act requires the board to adopt regulations that contain board guidelines and rules that have general application and future effect

- Board required by Chapter 539 of 2007 to adopt regulations **governing exceptions to licensure** by September 1, 2007, though the board has not yet adopted the regulations

Recommendation 36 (pg. 79): MBP should adopt the regulations by December 31, 2012. If the board fails to adopt regulations as required, budget bill language should be adopted in the 2013 session to withhold funds from MBP until the regulations are adopted

Failure to Update Regulations to Conform to Current Practice

- Chapter 539 of 2007 required board to update its regulations **to conform to current practice** by September 1, 2007, though the board has not yet complied

- Regulations include outdated terms, references, and fees; only updated when substantive changes are made

Recommendation 37 (pp. 79 and 80): Uncodified language should be adopted requiring the board to amend its regulations to conform to current practice by December 31, 2012. If the board fails to update its regulations as required, budget bill language should be adopted in the 2013 session to withhold funds from MBP until the regulations are adopted

Conclusion

Finding	Statutory	Regulatory	Repeat Finding from Prior Sunset Evaluation
The board should amend its regulations to reflect current fees (Recommendation 3, page 24).		✓	
The board and DHMH should jointly develop and implement a strategy to reduce the backlog of complaint cases (Recommendation 9, page 46)			✓
The board has not adopted sanctioning guidelines (Recommendation 12, page 50).	✓		✓
If unable to resolve a complaint within one year, the board is required to include in the record of the complaint a detailed explanation of the reason for delay. The board does not meet this requirement (Recommendation 13, page 51).	✓		
MBP does not disclose the filing of charges and notice of initial denial of license application to the public (Recommendation 14, page 51).	✓		
MBP should not use contractual employees to perform ongoing functions of the board (Recommendation 23, page 65).			✓
The board is not complying with the Open Meetings Act (Recommendation 29, page 69).	✓		
The board has not adopted regulations required under the Administrative Procedure Act (Recommendation 36, page 79).	✓		✓
It is unclear whether MBP is the most appropriate entity to be enforcing the self-referral law (Recommendation 40, page 85).			✓

Final Recommendation

Recommendation 46 (pg. 94): Statute should be amended to extend the termination date for the State Board of Physicians and the related allied health advisory committees until July 1, 2014. Further, uncodified language should be adopted to:

(1) require MBP to submit a follow-up report to DLS by June 1, 2013, that addresses the implementation of the recommendations made in this report, including any issues specifically noted for inclusion in the subsequent follow-up report; and

(2) require DLS, by October 1, 2013, to make a recommendation regarding further extension of the termination date based on the progress of MBP in complying with the recommendations of this report and the submission of the follow-up report by MBP

Additional Recommendations in the Report

- **Recommendation 1 (pg. 18): The board should develop Managing for Results (MFR) goals for allied health professionals to report on consumer satisfaction and licensure processing goals**

- **Recommendation 2 (pg. 22): To expedite the audit process and optimize board resources, the board should notify a licensee who has been selected for the continuing medical education (CME) audit in the renewal notice that the board is required to send each licensee. In the renewal notice, the board should advise such licensees who have been selected for the CME audit that they are required to send documentation of their CME to the board by December 31 of the renewal year**

- **Recommendation 6 (pg. 41): MBP should report complaint data for allied health professionals in board annual reports and MFR data in the same manner as reported for physicians**

- **Recommendation 7 (pg. 44): MBP should revise the expedited complaint process for CME cases to include (1) a ratification of the consent agreement or consent order by the board prior to the sanctions included in the agreement or order becoming effective; and (2) a mechanism for board review of more egregious cases before a consent agreement or consent order is offered to the licensee. MBP should also adopt regulations governing all expedited case resolution procedures. The amount of fines levied for failure to complete CME requirements should be reported in the board's annual report**

Additional Recommendations in the Report (Cont.)

- **Recommendation 8 (pg. 46): MBP should review and adjust the expedited process for ground 21 and 24 disciplinary cases to address (1) the lack of involvement of the board; (2) the involvement of the executive director in determining appropriate sanctions; (3) the lack of a determination regarding legal sufficiency; and (4) the lack of clarity regarding the board's role in the expedited processing letter**

- **Recommendation 10 (pg. 48): MBP should (1) expand the complaint database to track the sanctions imposed in cases; (2) track the date the board voted to charge in a way that can be more easily accessed; and (3) institute steps that ensure that information recorded in the database is complete and accurate, including listing cases under all grounds for which the licensee was charged and fully tracking the grounds for allied health cases**

- **Recommendation 11 (pg. 49): MBP should treat violations of probation and violations of orders as distinct, board-generated complaints and assign new complaint case numbers in these situations when the board learns of subsequent violations**

- **Recommendation 13 (pg. 51): If unable to resolve a complaint within one year, MBP should comply with statute and include in the record of the complaint a detailed explanation of the reason for the delay**

Additional Recommendations in the Report (Cont.)

- **Recommendation 16 (pg. 52): Statute should be amended to codify the requirement that MBP give the complainant in a case the opportunity to appear before the board during a case resolution conference. Board regulations should be updated to reflect this requirement**

- **Recommendation 18 (pg. 54): When referring individuals to the Maryland Physician Rehabilitation Program, the board should no longer specify licensees are required to participate in the program for a specified time period. Instead, the length of participation in the Maryland Physician Rehabilitation Program should be based on the clinical need for participation and whether the individual is still licensed in Maryland**

- **Recommendation 19 (pg. 54): Statute should be amended to authorize MBP to seek a warrant for entry into private premises for the purpose of investigating formal complaints that allege a person is practicing, attempting to practice, or offering to practice medicine without a license and to require that MBP have a warrant before entering into private premises for those purposes**

- **Recommendation 23 (pg. 65): MBP should not use contractual employees to perform ongoing functions of the board – including policy research – or to perform functions that could be done by existing employees**

Additional Recommendations in the Report (Cont.)

- **Recommendation 24 (pg. 67): To optimize current board resources, (1) board counsel, in conjunction with the executive director of the board, should establish clear guidance for board staff participation and attendance at closed meetings; and (2) the board should no longer require applicants for reinstatement who meet the requirements for reinstatement after a suspension to appear before the Reinstatement Inquiry Panel**

- **Recommendation 25 (pg. 68): Statute should be amended to clarify that the board is required to provide online profiles on allied health licensees and require that allied health licensee profiles, to the extent possible, contain the same information that is provided on physician profiles, including, for the most recent 10-year period, a description of any disciplinary action taken by MBP and any final disciplinary action taken by a licensing board in any other state or jurisdiction against an allied health licensee**

- **Recommendation 26 (pg. 68): The board should improve the quality of its website for consumers and licensees so it is more user friendly. Furthermore, the board should improve its transparency to the public by posting all required disciplinary action on its website as well as posting open meeting agendas, open meeting minutes, board staff names, meeting cancellations, and contact information through which a person can receive information from the board regarding medical malpractice settlements**

Additional Recommendations in the Report (Cont.)

- **Recommendation 27 (pg. 69): Board staff should standardize information and documents that are kept in the hard copy files and establish a system to ensure that the files are organized and information is readily accessible. Furthermore, hard copy complaint files should contain a checklist for documents included in the file, as well as dates corresponding with the steps in the complaint resolution process, such as when a board vote to charge occurred**

- **Recommendation 28 (pg. 69): Board staff should ensure that information included in the board's annual reports is consistent with information reported in its MFR submission and the board's complaint database. Likewise, when board staff prepares closed session minutes, staff should verify that case and licensure numbers are accurate and correspond to the appropriate licensee**

- **Recommendation 29 (pg. 69): To enhance compliance with the Open Meetings Act, MBP should ensure that its members and staff receive training in the requirements of the Open Meetings Act from OAG and the Department of Health and Mental Hygiene (DHMH). Board counsel should review and approve the closed and open meeting agendas prior to monthly board meetings to maintain compliance with the Act. Furthermore, if the board begins to discuss a matter in closed session that violates the Act, board counsel should advise the board that it is violating the Act and the board should cease discussion**

Additional Recommendations in the Report (Cont.)

- **Recommendation 30 (pg. 70): MBP should continue to improve board member training by developing training in conjunction with DHMH, OAG, and the Office of Administrative Hearings on board procedures, including parliamentary procedures to expedite the disciplinary process**

- **Recommendation 31 (pp. 71-72): Statute for each allied health advisory committee should include a requirement that the advisory committee submit an annual report to the board; the chair serve in an advisory capacity to the board as a representative of the committee; the board consider all recommendations of the advisory committee and provide a written explanation of the board's reasons for rejecting or modifying the committee's recommendation; the chair report to the board on a biannual basis and present to the board the committee's annual report; and the board provide to the advisory committee chair on a biannual basis a report on disciplinary matters involving allied health professionals. Also, board staff should ensure that the above allied health-related reporting requirements are met**

Additional Recommendations in the Report (Cont.)

- **Recommendation 32 (pp. 73-74): Uncodified language should be adopted requiring the board to develop and implement a plan by December 31, 2012, to improve the recruitment of allied health advisory committee members. The board should also be required to provide an update on implementation of that recruitment plan as well as study and report to DLS on several issues related to advisory committee membership. Specifically the report should address (1) measures the board is taking to fill vacancies; solicit, identify, and appoint new members before a member's term expires; promptly reappoint members eligible and nominated to serve for an additional term; and ensure that committee chairs are elected in a timely manner and preside over committee meetings; (2) whether board members should sit on allied health advisory committees; (3) whether the number of licensees should be considered when determining the size of an allied health advisory committee; and (4) whether the size and composition of the advisory committees should be altered through statutory amendment to more effectively carry out oversight functions, including whether membership should be reduced after the regulatory framework for the affected profession has been developed**

- **Recommendation 33 (pg. 74): As the board assumes responsibility to license new allied health professions, the board should adopt and appoint members, convene advisory committees, and develop and adopt regulations in a timely manner**

Additional Recommendations in the Report (Cont.)

- **Recommendation 34 (pg. 75): To ensure that allied health advisory committee and board members exercise independent judgment in carrying out their responsibilities, statute should be amended to prohibit the appointment of an individual to an advisory committee or the board if the individual is providing or has provided services to the board for remuneration. Any individual currently serving on MBP or an advisory committee who has provided services to the board for remuneration should be replaced**

- **Recommendation 35 (pg. 75): The board should adopt and implement meeting procedures to ensure that nonmembers are clearly identified before addressing an allied health advisory committee or the board**

- **Recommendation 38 (pg. 80): Statute should be amended to allow for current MBP practice regarding the requirement of postgraduate medical training for licensure and in cases of the failure to pass the required examination to be consistent with the Maryland Medical Practice Act**

Additional Recommendations in the Report (Cont.)

- **Recommendation 39 (pg. 83): Statute should be amended to remove the requirement that physician-pharmacist agreements and protocols to be approved by the State Board of Pharmacy and MBP. Instead, participating pharmacists and physicians should be required to submit copies of all agreements and protocols to their respective board and to promptly submit any modifications. Furthermore, MBP should collaborate with the State Board of Pharmacy to submit a follow-up report to the Senate Education, Health, and Environmental Affairs and the House Health and Government Operations committees by October 1, 2013, on the impact of these modifications to the drug therapy management program, including the number of physician-pharmacist agreements and drug therapy management protocols on file with the boards**

- **Recommendation 40 (pg. 85): Uncodified language should be adopted requiring the board to work with the Maryland Insurance Administration, OAG, and DHMH's Office of the Inspector General to determine the appropriate entity for investigating and enforcing Maryland's Self-referral Law. Also, MBP should be required to report the findings to DLS in a subsequent follow-up report**

Additional Recommendations in the Report (Cont.)

- **Recommendation 41 (pg. 86): Statute should be amended to authorize MBP, rather than requiring the circuit courts, to impose civil fines against alternative health systems that fail to report as required so that the civil fine provisions related to reporting by hospitals and related institutions and alternative health systems are the same. Statute should be amended to clarify how the court reporting requirement is to be enforced and place the requirement in a separate statutory section**

- **Recommendation 42 (pg. 87): Statute should be amended to clarify that all entities required to report to the board under §§ 14-413 and 14-414 of the Health Occupations Article are to report every six months even if the institution has not taken disciplinary action against a licensee or denied privileges to a licensee. The board should simplify its reporting form and conduct outreach with the facilities on this issue. Furthermore, the board should (1) exercise its authority to assess civil fines against and entity that does not report as required under § 14-413; and (2) create and post on the board's website a Report of Disciplinary Action form that may be used to report when a licensed allied health professional is disciplined or terminated**

- **Recommendation 45 (pg. 92): Uncodified language should be adopted that requires the board to license individuals who were enrolled in an unaccredited radiation therapy, radiography, or nuclear medicine technology program on October 1, 2010, and who graduate by June 30, 2014, provided that the individuals meet all other requirements for licensure**