Update on the Preliminary Evaluation of the State Board of Podiatric Medical Examiners

Recommendations: **Waive from Full Evaluation**

Extend Termination Date by 10 Years to July 1, 2022

During the 2009 interim, the Department of Legislative Services (DLS) conducted a preliminary evaluation of the State Board of Podiatric Medical Examiners as required by the Maryland Program Evaluation Act (§ 8-401 *et seq*. of the State Government Article). DLS recommended that the decision regarding waiver from full evaluation be deferred until the submission of a follow-up report. DLS withheld a recommendation to the Legislative Policy Committee (LPC) on whether to waive the board from full evaluation and for what period of time to extend the board's termination date until receiving the follow-up report. DLS has received and reviewed the board's follow-up report. Copies of the board's follow-up report are available upon request. Thus, this report presents our final findings and recommendations regarding the board.

Summary of the 2009 Preliminary Evaluation of the State Board of Podiatric Medical Examiners

After conducting the preliminary evaluation, DLS found that the board was sufficiently meeting its mandated duties, including efficiently issuing licenses and taking disciplinary actions against licensees where warranted. DLS was concerned, however, about the decline in the number of new licensees and the anticipated retirement of many existing licensees. Given these licensing trends, it was unclear whether the board could continue to maintain fiscal solvency without continuing to increase licensure fees, which are already the highest of any health occupations board in Maryland and significantly higher than those charged in neighboring states. Therefore, DLS recommended, among other things, that the board:

- create a plan, including the possibility of certifying practice expanders, to ensure that the board remains financially solvent without relying on further fee increases and determine how long the board can meet its expenses without higher fee revenues, including possible alternatives for long-term viability; and
- identify potential means to increase the number of podiatrists practicing in the State so that the board can remain solvent and podiatric services will continue to be available to the public.

Prepared by: Jodie L. Chilson ● Department of Legislative Services ● Office of Policy Analysis
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Furthermore, to address other operational issues identified during the preliminary evaluation, DLS recommended that the board:

- seek an Attorney General's opinion regarding the routine office inspection requirement and introduce departmental legislation to clarify the statute, if needed; and

- complete the tasks identified in the preliminary evaluation, specifically regarding the potential to make malpractice claim information available to the public and standardization of terminology and the identification of complaints in the board's complaint database.

Finally, DLS recommended that the board submit a follow-up report addressing these issues to LPC; the Senate Education, Health, and Environmental Affairs Committee; the House Health and Government Operations Committee; and DLS by October 1, 2010. The report was to include final fiscal 2010 revenues and expenditures, projected licensing trends, and projected revenues and expenditures for fiscal 2011.

DLS withheld a recommendation to LPC on whether to waive the board from full evaluation and for what period of time to extend the board's termination date until receiving the board's follow-up report. If the report was not submitted, DLS was to automatically conduct a full evaluation of the board during the 2011 interim. LPC adopted these recommendations at its December 2009 meeting.

The Board's 2010 Follow-up Report

The board submitted its follow-up report on September 16, 2010. The report addressed all of the issues requested by DLS, with the majority of the report focused on addressing concerns expressed by DLS over the board's financial situation.

Fiscal Solvency of the Board

Licensing: DLS was concerned because the board was experiencing a net decline in initial full licenses issued per year and license renewals due to a lack of residency programs in the State and the number of retiring podiatrists. The board reports that two new residency programs have been established as of July 1, 2010, and that the existing residency program has increased the number of podiatric residency slots. The board's experience has been that most podiatric residents remain in the State after residency so the board is projecting that the number of both initial full licenses and license renewals will increase. The board has also proposed departmental legislation to establish a volunteer podiatrist license. Through a board survey, many retiring podiatrists expressed interest in such a license, which would allow them to continue to practice under limited circumstances while paying lower fees to the board.

Expenditures and Revenues: The main concern expressed in the preliminary evaluation of the board was that revenues were not covering expenditures. To address the situation, the board is proposing legislation that would require podiatric medical assistants to register with the board. The board would charge a $100 annual fee, which is projected to generate at least $40,000 in annual revenues. The board is also proposing to license orthotists, pedorthists, and prosthetists by fiscal 2015. The fee for this license will be at least $200 annually, which would generate an estimated $80,000 in revenues. In estimating the amount of revenues that the new fees will generate, the board was conservative and, therefore, it is likely that the board will see more revenue from these fees than predicted. It should be noted that the board is also proposing to increase the executive director's position from half-time to full-time and add a contractual full-time clerical position to address the increase in workload that these changes will bring. After further questioning, the board clarified that the change in the executive director's hours is less a result of the new legislation and more a recognition that the executive director is already putting in full-time work for the board. The board also stated that the contractual nature of the clerical position will allow the board to evaluate whether the position is actually warranted once additional licensure duties are implemented.

A projection of the board's finances through fiscal 2017 provided by the board shows an increase in revenues, but the increase does not meet the increase in expenditures in some years. Due to correction of a budget error by the Department of Health and Mental Hygiene (DHMH), however, the board's fund balance increased to 63% of the board's expenditures at the end of fiscal 2010. Although the proposed change to the board's personnel will increase expenditures, the board's fund balance will remain in excess of the recommended 25% of expenditures. The board decided it needs to spend down the excess to avoid money being taken by DHMH and the Department of Budget and Management.

Office Inspections

The board, as advised by the Office of the Attorney General, is proposing departmental legislation that will clarify the current law on routine office inspections. Under current law, the board is required to conduct unannounced inspections of podiatrists' offices to determine compliance with the Centers for Disease Control and Prevention's (CDC) guidelines on universal precautions. In practice, however, the board was only conducting inspections if a complaint warranted it. Due to the board's limited finances, the board had narrowly interpreted the statute. The proposed legislation clarifies that the board is only required to conduct an unannounced inspection if a complaint has been filed and the complaint involves a violation of CDC guidelines.

Complaint Database

The board has standardized the terminology used in its complaint database and has begun to clearly identify those complaints that are originated by the board. As part of the evaluation, DLS also recommended that the board consider posting malpractice cases on its website, as is currently done by the State Board of Physicians. Both the board's counsel and the Office of the Attorney General informed the board that it does not have the authority to post the cases. Also, the pertinent information is already accessible through other sources, such as the Maryland Health Care Alternative Dispute Resolution Office.

Recommendations

The board has adequately addressed the concerns raised by DLS in the preliminary sunset evaluation. Legislation proposed by the board, as well as an increase in podiatric residency programs in the State, should result in more licensees in the State. Also, the board has proposed legislation that will increase the revenues of the board. While projected revenues do not meet expenditures in every fiscal year, the board will maintain a sufficient fund balance that can be drawn down if needed. As a result of the planning of the board and the information submitted in the board's follow-up report, **DLS recommends that LPC waive the board from full evaluation and that legislation be enacted to extend the board's termination date by 10 years to July 1, 2022. DLS also finds that there is no need for the board to submit any additional follow-up report.**