



Virginia
Regulatory
Town Hall

Notice of Intended Regulatory Action Agency Background Document

Agency Name:	Board of Long-Term Care Administrators, Department of Health Professions
VAC Chapter Number:	18VAC95-20-10 et seq. 18VAC95-30-10 et seq.
Regulation Title:	Regulations Governing the Practice of Nursing Home Administrators Regulations Governing the Practice of Assisted Living Facility Administrators
Action Title:	Increase in fees
Date:	March 8, 2010

This information is required prior to the submission to the Registrar of Regulations of a Notice of Intended Regulatory Action (NOIRA) pursuant to the Administrative Process Act § 9-6.14:7.1 (B). Please refer to Executive Order Twenty-Five (98) and Executive Order Fifty-Eight (99) for more information.

Purpose

Please describe the subject matter and intent of the planned regulation. This description should include a brief explanation of the need for and the goals of the new or amended regulation.

The issue to be addressed is the need of the Board of Long-Term Care Administrators to increase its fees to cover expenses for essential functions of licensing, investigation of complaints against licensees, and adjudication of disciplinary cases to protect the health and safety of residents and patients in long-term care in the Commonwealth.

§ 54.1-113 of the *Code of Virginia* requires that at the end of each biennium, an analysis of revenues and expenditures of each regulatory board shall be performed. It is necessary that each board have sufficient revenue to cover its expenditures. By the close of the FY09 fiscal year, the board had a balance of \$16,929. However, with the addition of assisted living administrators, who were required to be licensed as of January 1, 2009, there has been a substantial increase in the number of complaints that had to be investigated and the number of cases brought to administrative proceedings division to process. Those increases have resulted in expenditures in excess of budget

for those cost centers allocated to that board. Therefore, it is projected that the board may conclude the FY10 fiscal year with a deficit of (\$112,932) and that the board will continue to have deficits through the fiscal years going forward with a projected deficit of (\$720,203) by FY14. Since the fees from licensees will no longer generate sufficient funds to pay operating expenses for the board, consideration of a fee increase is essential. In order to begin to reduce the deficits and have sufficient funding for the operation of the board by fiscal year 2012, it is necessary to promulgate amendments to regulations at the earliest possible date.

Legal basis

18 VAC 195-20-10 et seq. Regulations Governing the Practice of Nursing Home Administrator and 18VAC95-30-10 et seq. Regulations Governing the Practice of Assisted Living Facility Administrators are promulgated under the general authority of Title 54.1, Chapter 24 of the Code of Virginia.

Chapter 24 establishes the general powers and duties of health regulatory boards including the responsibility to promulgate regulations in accordance with the Administrative Process Act which are reasonable and necessary and the authority to **levy and collect fees** that are **sufficient to cover all expenses** for the administration of a regulatory program.

§ 54.1-2400. General powers and duties of health regulatory boards.--The general powers and duties of health regulatory boards shall be:

5. *To levy and collect fees for application processing, examination, registration, certification or licensure and renewal that are sufficient to cover all expenses for the administration and operation of the Department of Health Professions, the Board of Health Professions and the health regulatory boards.*
6. *To promulgate regulations in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.) which are reasonable and necessary to administer effectively the regulatory system. Such regulations shall not conflict with the purposes and intent of this chapter or of Chapter 1 (§ 54.1-100 et seq.) and Chapter 25 (§ 54.1-2500 et seq.) of this title.*

The **contemplated regulation is mandated by § 54.1-113**; however the board must exercise some discretion in the amount and type of fees that will be increased in order to comply with the statute.

§ 54.1-113. Regulatory boards to adjust fees.--Following the close of any biennium, when the account for any regulatory board within the Department of Professional and Occupational Regulation or the Department of Health Professions maintained under § 54.1-308 or § 54.1-2505 shows expenses allocated to it for the past biennium to be more than ten percent greater or less than moneys collected on behalf of the board, it shall revise the fees levied by it for certification or licensure and renewal thereof so that the fees are sufficient but not excessive to cover expenses.

Need

Please detail the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, delineate any potential issues that may need to be addressed as the regulation is developed.

The board began FY08 with a balance of \$90,373; by the beginning of FY09, the balance was reduced to \$9,066. In its analysis of the funding under the current fee structure for programs under the Board of Long-Term Care Administrators, the following deficits are projected:

	<u>114- Long- Term Care Administrators</u>
Cash Balance as of June 30, 2009	16,929
FY10 Budget Revenue	343,845
Total FY10 Direct and Allocated Budget Expenditures	<u>473,706</u>
Projected Cash Balance as of June 30, 2010	<u><u>(112,932)</u></u>
Projected Cash Balance as of June 30, 2010	(112,932)
FY11 Budget Revenue	343,845
Total FY11 Direct and Allocated Budget Expenditures	<u>476,764</u>
Projected Cash Balance as of June 30, 2011	<u><u>(245,851)</u></u>
Projected Cash Balance as of June 30, 2011	(245,851)
FY12 Budget Revenue	343,845
Total FY12 Direct and Allocated Budget Expenditures	<u>497,414</u>
Projected Cash Balance as of June 30, 2012	<u><u>(399,420)</u></u>
Projected Cash Balance as of June 30, 2012	(399,420)
FY13 Budget Revenue	343,845
Total FY13 Direct and Allocated Budget Expenditures	<u>502,614</u>
Projected Cash Balance as of June 30, 2013	<u><u>(558,189)</u></u>
Projected Cash Balance as of June 30, 2013	(558,189)

FY14 Budget Revenue	343,845
Total FY14 Direct and Allocated Budget Expenditures	<u>505,859</u>
Projected Cash Balance as of June 30, 2014	<u><u>(720,203)</u></u>

With the added responsibility for regulating the practice of assisted living facility administrators, the board has experienced a significant increase in its disciplinary caseload. From 1/1/08 to 1/1/09, there were a total of 23 complaints about licensees of the board with two of those complaints about assisted living facility administrators (licensure was not required until 1/1/09). From 1/1/09 to 1/1/10, there were a total of 94 complaints with 33 complaints about assisted living facility administrators. There was also a substantial increase in the number of complaints about nursing home administrators – from 19 in 2008 to 41 in 2009. For 2009-2010, \$28,418 was budgeted for enforcement/investigations; as of January 1, 2010, \$83,971 (295% of budget) had been spent, with five months remaining in this fiscal year. Likewise, the budget for administrative proceedings had been overspent by 177% as cases move from the investigative stage to disciplinary proceedings.

With the increases in cases to be investigated and adjudicated, the expenditures for this board have already exceeded budget; and while revenue is projected to increase with the renewals in March, 2010, the increase in renewals is not expected to offset the increases in expenditures relating to the disciplinary responsibilities of the board.

Fee increases for licensees regulated by the Board of Long-Term Care Administrators are necessary in order for the board and the Department to continue performing essential functions of approving administrators-in-training, licensing new administrators and of protecting the public from continued practice by incompetent or unethical practitioners.

Substance

Please detail any changes that will be proposed. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed.

No specific regulatory language has been developed; the agency will develop alternative fee structures that will address the deficit in funding for the board to consider in its adoption of proposed regulations. Expenditures related to various statutory functions of the board, such as investigation of complaints against medical aides under the supervision of an assisted living facility administrator, will be examined to determine if there are any alternatives. In addition, the board will apply the Principles for Fee Development adopted by the agency in 1999 to ensure equitable distribution of costs and fees that are proportional to the activities they support.

The board will consider a variety of methods to achieve the goal of having sufficient revenue to cover expenditures. In addition to an examination of cases referred to enforcement for investigation to determine whether there are any cost-savings to be realized, the board will

consider options for revenue production including a one-time debt-reduction assessment and a step increase in fees to be phased in over the next several years.

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also, please describe the process by which the agency has considered or will consider other alternatives for achieving the need in the most cost-effective manner.

The Department of Health Professions could consider two possible solutions to the deficit of the Board of Long-Term Care Administrators; they are as follows:

1. Increase fees through the promulgation of regulations.

As required by law, the board is obligated to establish and collect fees that are necessary to fund operations of the board and the Department. An alternative is to seek the revenue from licensees and applicants to fully fund appropriated expenditures. Costs of services will be paid by consumers who use the services of providers, but licensure fees represent a miniscule percentage of the over-all costs of health care. The cost of operation of regulatory boards does not significantly affect the cost or access to health care. However, failure to fully fund the licensing and disciplinary services through fees will have a detrimental affect on quality and availability of care.

2. Reduce department/board operations and staff and remain at current fee level.

In order to prevent deficit spending, the department would need to lay off staff to reduce expenses associated with operations. The net result being a delay in the performance of or the elimination of the following responsibilities:

- **Investigations and discipline**
- **Examinations leading to license**
- **License renewals**
- **Regulation**
- **Approval of new licenses and administrators-in-training**

Delays in licensing and investigation could place a very vulnerable population in Virginia at health risk as administrators, who are responsible for the health and safety of residents in their facilities and who should not be practicing, would be able continue to practice. Delays in licensing or approval of training programs could also result in facility closings if there are insufficient numbers of administrators who are required for operation of an assisted living facility or a nursing home. It is believed that these consequences would not be acceptable to the administration, the General Assembly, or to the general public.

To avoid increases in fees, the board and the Department of Health Professions have delayed hiring of new positions and held some positions approved for hiring. Travel restrictions are in effect, and the agency has reduced the use of media services for recruitment.

Renewal Schedule

Persons licensed by the Board of Long-Term Care Administrators renew their licenses every year by March 31st. Therefore, it is essential to have an increased fee in place by early 2012 in order to prevent the deficit from growing even larger and necessitating an even greater fee increase.

Public participation

The agency is seeking comments on the intended regulatory action, including but not limited to 1) ideas to assist in the development of a proposal, 2) the costs and benefits of the alternatives stated in this background document or other alternatives and 3) potential impacts of the regulation. The agency is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit comments may do so via the Regulatory Townhall website , www.townhall.virginia.gov, or by mail, email or fax to Elaine Yeatts, Agency Regulatory Coordinator, 9960 Mayland Drive, Henrico, VA 23233 or elaine.yeatts@dhp.virginia.gov or by fax to (804) 527-4434. Written comments must include the name and address of the commenter. In order to be considered comments must be received by the last day of the public comment period.

A public hearing will be held after the publication of proposed amendments and notice of the hearing may be found on the Virginia Regulatory Town Hall website (www.townhall.virginia.gov) and can be found in the Calendar of Events section of the Virginia Register of Regulations. Both oral and written comments may be submitted at that time.

Participatory approach

The board will be using the participatory approach in the development of the proposal through inclusion of the public in meetings of the Regulatory Committee and the board at which fee proposals will be discussed and licensees and other interested parties will have the opportunity to offer comment.

Family impact

The proposed regulatory action would not strengthen or erode the authority and rights of parents, encourage or discourage economic self-sufficiency, or strengthen or erode the marital commitment. There could be a very modest decrease in disposable family income for licensees depending on the amount and nature of the fee increase.