



## Proposed Regulation Agency Background Document

<b>Agency name</b>	Board of Nursing, Department of Health Professions
<b>Virginia Administrative Code (VAC) citation</b>	18 VAC 90 -20
<b>Regulation title</b>	Regulations Governing the Practice of Nursing
<b>Action title</b>	Increase in fees
<b>Document preparation date</b>	

This information is required for executive review ([www.townhall.state.va.us/dpbpages/apaintro.htm#execreview](http://www.townhall.state.va.us/dpbpages/apaintro.htm#execreview)) and the Virginia Registrar of Regulations ([legis.state.va.us/codecomm/register/regindex.htm](http://legis.state.va.us/codecomm/register/regindex.htm)), pursuant to the Virginia Administrative Process Act ([www.townhall.state.va.us/dpbpages/dpb\\_apa.htm](http://www.townhall.state.va.us/dpbpages/dpb_apa.htm)), Executive Orders 21 (2002) and 58 (1999) ([www.governor.state.va.us/Press\\_Policy/Executive\\_Orders/EOHome.html](http://www.governor.state.va.us/Press_Policy/Executive_Orders/EOHome.html)), and the *Virginia Register Form, Style and Procedure Manual* ([http://legis.state.va.us/codecomm/register/download/styl8\\_95.rtf](http://legis.state.va.us/codecomm/register/download/styl8_95.rtf)).

### Brief summary

*In a short paragraph, please summarize all substantive changes that are being proposed in this regulatory action.*

Fees related to application for and renewal of licensure as a registered nurse or a licensed practical nurse are being increased to provide sufficient funding for an increased disciplinary caseload related to mandated reporting of misconduct and to offset the decrease in revenue related to Virginia's entry into the Nurse Licensure Compact in January, 2005. Both initiatives result from legislation passed by the 2003 General Assembly. The biennial renewal fee will increase from \$70 to \$95, and other fees associated with the renewal fee will increase accordingly.

## Basis

*Please identify the state and/or federal source of legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly bill and chapter numbers, if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.*

Regulations are promulgated under the general authority of Chapter 24 of Title 54.1 of the Code of Virginia. Section 54.1-2400 (6) provides the Board the authority to promulgate regulations to administer the regulatory system:

***§ 54.1-2400 -General powers and duties of health regulatory boards***

*The general powers and duties of health regulatory boards shall be:*

...

*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 legal authority to promulgate the regulation for a fee increase is in fifth enactment clause of Chapter 762 of the 2003 Acts of the Assembly. See complete copy of HB 1441 (Chapter 762) - <http://leg1.state.va.us/cgi-bin/legp504.exe?031+ful+CHAP0762>

The legal authority to promulgate the regulation for a fee increase as needed to offset a loss of revenue related to the Nurse Licensure Compact is Chapter 249 of the 2003 Acts of the Assembly. See complete copy of HB 1871 (Chapter 249) – <http://leg1.state.va.us/cgi-bin/legp504.exe?031+ful+CHAP0249>

## Purpose

*Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal and the problems the proposal is intended to solve.*

The purpose of the regulatory action is to address the need for increased revenue related to two legislative actions of the 2003 General Assembly.

### **House Bill 1441**

House Bill 1441 strengthened requirements for health care institutions to report misconduct by nurses when there is a “reasonable probability that such health professional may have engaged in unethical, fraudulent or unprofessional conduct as defined by the pertinent licensing statutes and

regulations.” Both the time limit for reporting and the content of the report have been specified in the Code, and the civil penalty for failure to report has been increased from a maximum of \$10,000 to \$25,000.

Accordingly, the agency estimated that complaints or reports of misconduct by nurses could increase from 1400 to 1750 per year, resulting in approximately 315 new cases to fully investigate, 78 more informal conferences and 22 more formal hearings. In addition, there may be approximately 174 cases that will result in a confidential consent agreement, which must be prepared by legal staff and reviewed by counsel. During debate on the bill, it was clearly noted that the additional cost associated with compliance and implementation of HB1441 would result in increased costs for the affected boards and would generate an immediate need for additional revenue in order to address the increased number of reports, investigations and disciplinary cases sent to the Board. To fail to address misconduct by a nurse in a timely manner could place the public health and safety at risk.

In response, the General Assembly included an enactment clause to authorize the promulgation of emergency regulations to increase fees. The fifth enactment clause in Chapter 762 of the 2003 Acts of the Assembly requires, “That the health regulatory boards shall promulgate regulations to address any fee adjustments necessary to accomplish the regulatory and enforcement responsibilities set forth in this act to be effective within 280 days of its enactment.” In compliance, the board adopted emergency regulations adding \$12 to the biennial renewal fee and proposes to include that increase in the promulgation of permanent regulations.

### **House Bill 1871**

House Bill 1871 authorizes Virginia's membership in a multi-state nursing compact that provides for the reciprocal recognition of other states' licenses to practice as a registered nurse or a licensed practical nurse. While the provisions of this bill will not become effective until January 1, 2005, the Board must begin the process of addressing the resulting loss of revenue, which can only be accomplished through an increase in fees charged to applicants and licensees.

Currently, there are 19 states that have implemented membership in the Compact and others that are in the process. For those nurses who hold a license in Virginia but reside in a Compact state, it will become unnecessary for them to retain a Virginia license as they will be practicing in Virginia on a multi-state licensure privilege. Therefore, it is expected that the Board of Nursing will realize a loss of revenue from renewals, application fees for licensure by endorsement, and fees for verification of licensure to other states.

While there may be some very modest savings from fewer licensees and fewer applicants, the expenditures for the Board are largely related to its disciplinary caseload, which would not be decreased by this action. Nurses who practice in Virginia, even though they hold a license in another state and pay their renewal fees to that state, would still be subject to the investigations and disciplinary proceedings in this state. Therefore, all the costs for investigating and conducting a hearing on a complaint of misconduct on a compact nurse will be borne by those nurses who hold a Virginia license. To ensure that there is sufficient revenue for the Board to continue its responsibility of licensing minimally competent nurses and taking disciplinary action against those who are impaired or unprofessional by the effective date of the Compact, it must

begin to revise its fee schedule accordingly. If the Board delayed the adoption of increased fees related to the loss of revenue until after entry into the Compact, a deficit would likely result which would necessitate even higher fees to resolve the deficit and have sufficient revenue for current operations.

Failure to provide sufficient funding through the adoption of regulations to cover the costs of implementing this legislation would place the agency in non-compliance with the law. If the Board failed to increase fees sufficient to provide adequate staffing and support for investigative and disciplinary activities, the public health and safety would suffer by long delays in responding to complaints, processing cases and possibly removing incompetent or dangerous practitioners. The proposed regulatory action is essential to ensure that the Board and the Department have sufficient resources to respond to reports of misconduct in a timely and thorough fashion.

### Substance

*Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (More detail about these changes is requested in the "Detail of changes" section.)*

To accommodate the projected increase in reporting, investigations and disciplinary proceedings for the Board of Nursing related to HB 1441, the agency calculated costs for additional staff, hearings, equipment and related expenses. It is estimated that by June 30, 2006 at the conclusion of the 2004-06 biennium, costs related to HB1441 could result in a \$2.1 million deficit for the Board. In order to adjust fees as necessary to accomplish the regulatory and enforcement responsibilities set forth in the act, the Board adopted an emergency regulation to increase the biennial renewal fee by \$12 and has set other fees accordingly.

The emergency action amended 18VAC90-20-30 to increase the biennial renewal fee for registered nurses and licensed practical nurses by \$12 from \$70 to \$82. Likewise, other fees which are associated with the licensing (renewal) fee were increased by a similar amount.

The fee increase necessary to offset the loss of revenue related to membership in the Compact has been estimated based on consultation with other Compact states and an internal review of the data systems modifications, staffing and administrative cost of implementation. In the fiscal impact statement prepared by the Department of Planning and Budget on HB1871, the estimate was that renewal fees would need to increase by approximately \$10 per biennium; other fees would experience a similar increase. Since the FIS was prepared, additional states have voted to join the Compact, including Tennessee, so an additional loss of revenue can be anticipated. The total impact to the biennial budget of the Board is estimated to include a loss of revenue and addition to expenditures totaling \$1,318,700 for the '06 biennium. The nurses who are required to retain their Virginia licenses will need to absorb that amount through an increase in the biennial renewal of \$13. Combining the impact of increased disciplinary caseload and membership in the Compact, the Board determined that it was necessary to propose a \$25 per biennium in nursing renewal fees with a concomitant increase in application, reinstatement and late fees.

**Issues**

*Please identify the issues associated with the proposed regulatory action, including:*

- 1) *the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
- 2) *the primary advantages and disadvantages to the agency or the Commonwealth; and*
- 3) *other pertinent matters of interest to the regulated community, government officials, and the public.*

*If the regulatory action poses no disadvantages to the public or the Commonwealth, please so indicate.*

1) In order for the Department to continue processing applications, investigating complaints and conducting disciplinary proceedings against nurses, it is necessary for the Board to have sufficient funding. There are no direct advantages to the public in taking action to increase nursing renewal fees, but failure to act could place the public in jeopardy as there could be delays in licensing nurses, which would further exacerbate the nursing shortage in the state, and there could be significant delays in the investigation and adjudication of complaints of negligence or other unprofessional conduct. To the extent the Board has acted in anticipation of its need for additional revenue to offset additional expenditures and loss of income, the public is well-served. There are no disadvantages to the public; a \$25 increase in a professional licensure fee payable every two years is not likely to deter persons interested in the entering the profession nor is it likely to cause any currently-practicing nurse to leave the profession.

2) The primary advantage to the Commonwealth is the availability of sufficient funding for the Department and the Board to carry out its statutory responsibilities. Since the agency is self-funded through its licensure fees, an increase in fees is the only mechanism for producing adequate income to meet its budget. There are no disadvantages to the agency or the Commonwealth.

3) There are no other matters of interest related to this regulatory action that are pertinent to the regulated community, government officials, and the public.

**Economic impact**

*Please identify the anticipated economic impact of the proposed regulation.*

<p><b>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures</b></p>	<p>a) As a special fund agency, the Board must generate sufficient revenue to cover its expenditures from non-general funds, specifically the renewal and application fees it charges to practitioners for necessary functions of regulation; b) The agency will incur some one-time costs (less than \$5,000) for mailings to the Public Participation Guidelines mailing lists and conducting a public hearing. Every effort will be made to incorporate those into anticipated mailings and Board meetings already</p>
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	scheduled; there will be on on-going expenditures associated with the fee increase.
<b>Projected cost of the regulation on localities</b>	None
<b>Description of the individuals, businesses or other entities likely to be affected by the regulation</b>	The entities that are likely to be affected by these regulations would be registered nurses and licensed practical nurses.
<b>Agency’s best estimate of the number of such entities that will be affected</b>	Currently, there are 85,718 registered nurses and 27,236 practical nurses licensed in Virginia.
<b>Projected cost of the regulation for affected individuals, businesses, or other entities</b>	The projected cost to affected individuals will be primarily related to an increase in the cost of maintaining a professional license. Relative to the costs of qualifying and obtaining a license, the additional \$25 per biennial should not have a significant negative impact on licensees or their employers. There may be some licensees who are not currently practicing who would decide to give up their license to avoid paying the increased amount.

**Alternatives**

*Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action.*

The proposed regulatory action addresses the need for increased revenue related to two legislative actions of the 2003 General Assembly. The more immediate need was an increase in revenue to provide funding for increased reporting of negligence or misconduct by nurses in response to House Bill 1441. A clause on that legislation mandated promulgation of amendments to increase fees within 280 days of enactment, so emergency regulations were adopted and went into effect on July 15, 2003. That fee increase remains in effect until July 14, 2004 and must be replaced by permanent regulations in order to continue to fund the increased workload for investigations, administrative proceedings, office of the attorney general and the board.

With the passage of HB1441, the agency worked internally and in conjunction with the Office of the Attorney General to calculate the potential impact of the legislation and determine costs that are reasonable but sufficient to address the anticipated case load. At this time, the agency has calculated the costs attributable to HB1441 to be:

FY04	1,678,874
FY05	2,286,311
FY06	2,388,767

Should the workload and expenditures be less than expected, the Board will either recalculate the fee increase needed at the time of adoption of final regulations or take advantage of the exemption in the APA and immediately reduce fees accordingly.

In the fiscal impact statement (FIS) prepared for HB1441, the Department of Planning and Budget (DPB) estimated that an additional 27.5 FTE's would be needed for the boards, investigations, compliance, and administrative proceedings. The agency has further refined the estimates and determined that 27 FTE's will likely be necessary. For planning purposes, costs for those positions have been staged into projected hiring quarters over the next fiscal year. Those positions will only be filled as necessary in response to the actual caseload that develops. In addition, however, the Office of the Attorney General estimates that 4,000 additional hours will be needed to handle related legal matters.

DPB had estimated in the FIS on HB1441 that the biennial renewal fees for registered and licenses practical nurses would increase by approximately \$18 with the renewal fee increasing from \$70 to \$88 for a 26 percent increase. In fact, the agency has estimated that a slightly higher percentage of the overall cost would likely fall to Medicine. Therefore, of the total proposed increase of \$25 per biennium for licensure renewal, the amount related to increased reporting under HB1441 is \$12 per biennium.

In addition to reporting requirements of HB1441, the 2003 General Assembly also mandated in House Bill 1871 that Virginia become a member of the Nurse Licensure Compact. In the fiscal impact statement prepared on HB1871 by the Department of Planning and Budget, it was clearly stated that the legislation will decrease the amount of revenue collected by the Board of Nursing, thereby increasing regulatory fees for the remaining Virginia nurses. At the time the legislation was introduced, there were 16 states that were a part of the compact; there are now 19 members (including Virginia) and several others that have passed enabling legislation.

At the time the FIS was prepared, the calculation for fiscal impact was based on the number of Virginia licensees who listed addresses in compact states and it was estimated that the loss of licensure revenue might result in at least a \$10 increase in renewal fees for Virginia nurses. Since the number of states participating in the Compact has grown (including another border state, Tennessee) and the expenses related to implementation of the Compact are greater than originally anticipated, the portion of the proposed fee increase related to the Compact is \$13 of the \$25 per biennium increase in the renewal fee.

Calculation for the \$25 fee increase was as follows:

Loss of Biennial Income from Compact membership

Biennial renewal fees (9667 RN's & LPN's with addresses in Compact states X current renewal fee of \$82)	\$792,694
Income from verification of licenses which will all be done by NURSYS (\$132,320 in '02 & \$149,195 in '03)	281,515
Licensure by endorsement (.086 of total endorsement income for '02 & '03) ( ( % number of total # of licensees who are from Compact states is .086)	<u>56,329</u>
	\$1,130,538

Reduction in Biennial Expenditures

Biennial renewal (9667 X \$3.19 cost per renewal)	\$30,838
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Additions to Biennial Expenditures

Notification to all licensees, employers, PPG list – mailing & printing	\$90,000
Reissuing licenses, etc.	
Compact administrators fee (\$3,000 annually)	6,000
Employee training, costs related to implementation	4,000
Travel/meeting expenses for board members/staff	19,000
System/database modifications	50,000
Additional employees (2 P-14 positions)	<u>50,000</u>
	\$219,000
TOTAL BIENNIAL IMPACT	\$1,318,700
Number of RN’s & LPN’s licensees with VA or non-Compact address	103,287
Increase in biennial renewal to offset impact of Compact	\$12.76
Pre-emergency regulation renewal fee	\$70
Addition related to HB1441 (emergency regulation)	\$12
Addition related to Nurse Licensure Compact	\$13
Total biennial renewal fee	\$95

As additional states become a part of the compact, revenues for the Board will continue to decline but some expenditures related to notification of all licensees and their employers, retraining of staff, reissuance of licenses, and systems modification will not be recurring expenses. Also, while the total dollar amount of increase per biennium does not appear excessive, the 35.7% increase could cause some current license-holders who are not actively practicing to relinquish their nursing license, resulting in a further decline in revenue. Therefore, the Board has determined that it is reasonable to propose a \$25 increase in the nurse renewal fee with the intent of reexamining all calculations during the 60-day comment period prior to the adoption of a final regulation.

**Public comment**

*Please summarize all comments received during public comment period following the publication of the NOIRA, and provide the agency response.*

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The Notice of Intended Regulatory Action was published on July 28, 2003 with the comment period concluded on August 27, 2003. There were no public comments and none from the Virginia Nurses Association.

**Family impact**

*Please assess the impact of the proposed regulatory action on the institution of the family and family stability.*

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In its analysis of the proposed regulatory action, the agency has determined that there is no potential impact on the institution of the family and family stability. There will be a modest impact on family income as renewal of licensure will increase from \$ 70 per biennium to \$95.

**Detail of changes**

*Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.*

*If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all changes between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.*

<b>Current section number</b>	<b>Current requirement</b>	<b>Proposed change and rationale</b>
30	<p>Biennial renewal fee is \$70 (\$82 under the emergency regulation currently in effect)</p> <p>Application fee is \$105. Under the emergency regulation, the application fee is \$117)</p> <p>Late renewal fee is \$25. Under emergency regulations, the late fee is \$30.</p> <p>Reinstatement of lapsed license is \$120, \$132 under emergency regulations. Reinstatement of a suspended or revoked license is \$160, \$172 under emergency regulations.</p>	<p>Biennial renewal fee will be \$95. Of the \$25 increase, \$12 is related to the requirements of HB1441 on increased reporting and is already effective through an emergency action. An additional \$13 per nurse per biennium will be necessary to offset the additional expenditures and loss of revenue related to joining the Nurse Licensure Compact in January, 2005 as mandated by HB1871.</p> <p>Application fee will be \$130. Consistent with the Fee Principles, the application fee includes the first biennial renewal so the new licensee is not required to renew his license for at least two years. Therefore, the application fee must be increased by the same amount as the renewal fee.</p> <p>Late renewal fee will be \$35. According to the Fee Principles, the late fee should be approximately 1/3 of the renewal fee, so this fee is adjusted accordingly.</p> <p>Reinstatement fee for a lapsed license will be \$145; reinstatement for a suspended or revoked license will be \$185. As with the application fee, the reinstatement fee includes the biennial renewal and therefore is adjusted consistent with the increase in the renewal fee.</p>