



## Final Regulation Agency Background Document

<b>Agency name</b>	Board of Long-Term Care Administrators, Department of Health Professions
<b>Virginia Administrative Code (VAC) citation</b>	18VAC95-20-10 et seq. 18VAC95-30-10 et seq.
<b>Regulation title</b>	Regulations Governing the Practice of Nursing Home Administrators Regulations Governing the Practice of Assisted Living Facility Administrators
<b>Action title</b>	Increase in fees
<b>Date this document prepared</b>	6/24/14

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Brief summary

*Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation. Also, please include a brief description of changes to the regulation from publication of the proposed regulation to the final regulation.*

The Board of Long-Term Care Administrators is proposing amendments to increase fees charged to regulants and applicants. Annual renewal fees would be increased as follows: 1) For nursing home and assisted living facility administrators, the increase is \$90 per year from \$225 to \$315; and 2) For preceptors, the increase is \$15 per year to \$65. Other fees set proportionally to the renewal fees would also be increased. An application fee (which includes initial licensure) would be increased from \$200 to \$315. There is a new fee of \$1,000 proposed for reinstatement after disciplinary action to partially cover the costs of an investigation and a hearing for reinstatement of licensure.

In the adoption of final regulations, the Board added a shortfall reduction assessment to the renewal fees due in 2015. For nursing home administrators and assisted living facility administrators, the assessment will be \$100; for preceptors, the assessment will be \$20.

**Statement of final agency action**

*Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency or board taking the action, and (3) the title of the regulation.*

On June 24, 2014, the Board of Long-Term Care Administrators amended 18VAC95-20-10 et seq., Regulations Governing the Practice of Nursing Home Administrators and 18VAC95-30-10 et seq., Regulations Governing the Practice of Assisted Living Facility Administrators.

**Legal basis**

*Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person's overall regulatory authority.*

18VAC95-20-10 et seq., Regulations Governing the Practice of Nursing Home Administrators 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 amended regulation is mandated by § 54.1-113.

*§ 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.*

**Purpose**

*Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons it is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.*

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 a very vulnerable population who receive services in long-term care facilities 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. In the FY09 fiscal year, the board collected biennial renewal fees, resulting in a balance of \$16,929. However, in FY10, allocated and direct expenditures and the cash transfers to the General Fund totaled \$470,144 and revenue totaled \$354,270, resulting in a shortfall of (\$98,946) by June 30, 2010. The current deficit of the Board stands at (\$473,746), which equates to \$311.26 per license in addition to the \$225.00 per license renewal fee. With a small pool of licensees (approximately 818 nursing home administrators and 616 assisted living administrators), it is very difficult to have sufficient revenue to eliminate a shortfall and have adequate revenue for future budgets. The Board has not had a fee increase in **over 11 years**.

The majority of the Board’s expenditures (82%) come directly from costs allocated for the board’s utilization of investigations, adjudication, and the Office of the Attorney General. VITA costs as well as other Agency’s costs divided among all boards. The remaining 18% of the LTC expenditures are the only costs that are within the Board’s direct managing control, and 44% of those costs are personnel expenses. The Board’s Executive Director reduced direct expenditures by 20% during FY 11 and has continued these reductions through FY 14. The Board began licensing assisted living facility administrators in 2009, and the investigative caseload quadrupled in two years with the addition of that profession, which increased costs associated with investigating and adjudicating these cases (informal and formal hearings). There have also been significant increases in fees charged to the agency by Northrop Grumman and Virginia Information Technologies Agency. When the contract with Northrop-Grumman (VITA) was signed our agency IT services was \$850,000. In FY 11, the cost for those services was \$3.6 million.

Since the fees from licensees no longer generate sufficient funds to pay operating expenses for the board, adoption of a fee increase is essential to continue licensing, investigating and disciplining long-term care administrators. Failure to increase fees for adequate revenue will result in a

decreased ability to investigate and adjudicate complaints and provide timely licensure of health professionals. This Board receives very serious allegations concerning our most frail and elderly population resulting in serious disciplinary action such as suspension and revocation of licenses. If investigative efforts are minimized, it could jeopardize the health, safety and welfare of the citizens of Virginia which is in opposition to the mission of the agency.

**Substance**

*Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the "All changes made in this regulatory action" section.*

The Board of Long-Term Care Administrators is proposing amendments to increase fees charged to regulants and applicants. Annual renewal fees would be increased as follows: 1) For nursing home and assisted living facility administrators, the increase is \$90 per year from \$225 to \$315; and 2) For preceptors, the increase is \$15 per year to \$65. Other fees set proportionally to the renewal fees would also be increased. An application fee (which includes initial licensure) would be increased from \$200 to \$315. There is a new fee of \$1,000 proposed for reinstatement after disciplinary action to partially cover the costs of an investigation and a hearing for reinstatement of licensure.

In the adoption of final regulations, the Board added a shortfall reduction assessment to the renewal fees due in 2015. For nursing home administrators and assisted living facility administrators, the assessment will be \$100; for preceptors, the assessment will be \$20.

**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 there are no disadvantages to the public or the Commonwealth, please indicate.*

- 1) The primary advantage to the public would be that increased fees will produce adequate revenue to fund the licensing and disciplinary activities of the board. With the **shortfall** at (\$98,946) at the end of FY10 and projected to increase to (\$951,192) in FY16, there could be significant delays in licensing new administrators, approving administrator-in-training programs and in the investigation and adjudication of complaints against licensees. There are no disadvantages; increases in annual renewal fees of \$90 should not impact the cost of long term care for Virginians.
- 2) There are no disadvantages to the agency; the advantage would be that fees would be sufficient to cover expenditures, which is a requirement of the Code of Virginia.
- 3) There are no additional issues.

**Changes made since the proposed stage**

*Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar’s office, please put an asterisk next to any substantive changes.*

Section number	Requirement at proposed stage	What has changed	Rationale for change
80 in Chapter 20 40 in Chapter 30	Sets out fees for applicants and licensees	Addition of a one-time shortfall reduction assessment of \$100 for nursing home administrators and assisted living facility administrators and \$20 for preceptors to be paid with the first renewal after the effective date of regulations (projected to be 2015).	The proposed fee increase will produce sufficient revenue to cover expenditures of the Board in the next two biennia, but will not eliminate the shortfall that has accumulated over the past several biennia. Therefore, a one-time assessment is adopted to reduce the deficit so the proposed fees will be sufficient for future budgets of the Board.

**Public comment**

*Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate.*

The proposed regulation was published on November 18, 2013 with comment until January 17, 2014. A public hearing was conducted on December 10, 2013 with no public in attendance. **There have been no public comments during the comment period.**

**All changes made in this regulatory action**

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

Current section number	Current and Proposed change	
Chapter 20, Section 80 A	Changes to Nursing home regulations	
	1. A.I.T. program application	<del>\$185</del> \$215

	2. Preceptor application	\$50 <u>\$65</u>
	3. Licensure application	\$200 <u>\$315</u>
	4. Verification of licensure requests from other states	\$25 <u>\$35</u>
	5. Nursing home administrator license renewal	\$225 <u>\$315</u>
	6. Preceptor renewal	\$50 <u>\$65</u>
	7. Penalty for nursing home administrator late renewal	\$65 <u>\$110</u>
	8. Penalty for preceptor late renewal	\$20 <u>\$25</u>
	9. Nursing home administrator reinstatement	\$315 <u>\$435</u>
	10. Preceptor reinstatement	\$95 <u>\$105</u>
	11. Duplicate license	\$15 <u>\$25</u>
	12. Duplicate wall certificates	\$25 <u>\$40</u>
	<u>13. Reinstatement after disciplinary action</u>	<u>\$1,000</u>

*The rationale for the fee increases is stated in the Purpose section above. Application, late, and reinstatement are based on the renewal fee, which provides the vast majority of revenue for boards and the Department. As the renewal fee is increased, other fees are increased accordingly. Fees for administrative services, such as provision of a duplicate license or wall certification or verification of licensure to another state are based on costs (staff time, data, postage, etc.) for such services.*

<b>Current section number</b>	<b>Current and Proposed change, rationale, and consequences</b>	
Chapter 30, Section 40 A	Changes to Assisted living regulations	
	1. ALF AIT program application	\$185 <u>\$215</u>
	2. Preceptor application	\$50 <u>\$65</u>
	3. Licensure application	\$200 <u>\$315</u>
	4. Verification of licensure requests from other states	\$25 <u>\$35</u>
	5. Assisted living facility administrator license renewal	\$225 <u>\$315</u>
	6. Preceptor renewal	\$50 <u>\$65</u>
	7. Penalty for assisted living facility administrator late renewal	\$65 <u>\$110</u>
	8. Penalty for preceptor late renewal	\$20 <u>\$25</u>
	9. Assisted living facility administrator reinstatement	\$315 <u>\$435</u>
	10. Preceptor reinstatement	\$95 <u>\$105</u>
	11. Duplicate license	\$15 <u>\$25</u>
	12. Duplicate wall certificates	\$25 <u>\$40</u>
	13. Returned check	\$35
	<u>14. Reinstatement after disciplinary action</u>	<u>\$1,000</u>

*The rationale for the fee increases is stated above.*

**Change made since publication of proposed regulation:**

The change to proposed regulation is the addition of a one-time shortfall reduction assessment of \$100 for nursing home administrators and assisted living facility administrators and \$20 for preceptors to be paid with the first renewal after the effective date of regulations (projected to be 2015).

*The proposed fee increase will produce sufficient revenue to cover expenditures of the Board in the next two biennia, but will not eliminate the shortfall that has accumulated over the past several biennia. With the proposed regulations in effect by 2015, the projected shortfall would still be in excess of (\$125,000) by FY18. Therefore, additional revenue is required to meet the statutory obligation of the Board to have revenue sufficient to cover expenditures. The Board has adopted a one-time assessment to reduce the deficit so the proposed fees will then be sufficient for future budgets of the Board. Since current licensees have had the "benefit" of less than adequate fees over the past years, it is logical to assess those persons for the shortfall as opposed to an additional increase that would produce more revenue than needed to cover current expenditures in the near future.*