



Virginia
Regulatory
Town Hall

Notice of Intended Regulatory Action Agency Background Document

Agency Name:	Board of Optometry, Department of Health Professions
VAC Chapter Number:	18 VAC 105-20-10 et seq.
Regulation Title:	Regulations Governing the Practice of Optometry
Action Title:	Increase in fees
Date:	1/26/10

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 Optometry to increase their fees to cover expenses for essential functions of licensing, investigation of complaints against licensees and adjudication of disciplinary cases required for public safety and security of the citizens of 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, the Board of Optometry had expended \$357,026 and had revenue of \$300,750. Because of a cash balance of \$175,830, the board ended the fiscal year with a surplus. However, in FY10, expenditures are projected to be \$373,337 and revenue \$300,750, and that trend continues through the next several fiscal years. By FY12, the board will not have sufficient carry-over cash and fees will not generate sufficient funds to pay operating expenses for the board and has a projected shortfall of (\$39,023). In order to begin to have sufficient funding for the operation of the board by fiscal year 2012, it is necessary to begin promulgation of amendments to regulations.

Legal basis

18 VAC 105-20-10 et seq. Regulations Governing the Practice of Optometry 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.

Funding from fees is currently insufficient to keep up with expenditures. In its analysis of the funding under the current fee structure for programs under the Board of Optometry, the following deficits are projected:

Projected Cash Balance as of June 30, 2009	175,830
FY10 Budget Revenue	300,750
Total FY10 Direct and Allocated Budget Expenditures	

	<u>357,026</u>
Projected Cash Balance as of June 30, 2010	<u><u>119,554</u></u>
Projected Cash Balance as of June 30, 2010	119,554
FY11 Budget Revenue	300,750
Total FY11 Direct and Allocated Budget Expenditures	<u>373,337</u>
Projected Cash Balance as of June 30, 2011	<u><u>46,967</u></u>
Projected Cash Balance as of June 30, 2011	46,967
FY12 Budget Revenue	300,750
Total FY12 Direct and Allocated Budget Expenditures	<u>386,740</u>
Projected Cash Balance as of June 30, 2012	<u><u>(39,023)</u></u>
Projected Cash Balance as of June 30, 2012	(39,023)
FY13 Budget Revenue	300,750
Total FY13 Direct and Allocated Budget Expenditures	<u>389,580</u>
Projected Cash Balance as of June 30, 2013	<u><u>(127,853)</u></u>
Projected Cash Balance as of June 30, 2013	(127,853)
FY14 Budget Revenue	300,750
Total FY14 Direct and Allocated Budget Expenditures	<u>396,293</u>
Projected Cash Balance as of June 30, 2014	<u><u>(223,396)</u></u>

Annual renewal fees for licensees have not been increased for at least 16 years; in 1994 the annual renewal fee was \$150, which is what it is today. In 1995/96, there was a one-time fee reduction to \$20 annually to reduce an accumulated surplus. In 2005, the separate certification required for Therapeutic Pharmaceutical Agents (TPA) was eliminated since all newly licensed optometrists were qualified to hold TPA certification. At that time, the application for TPA certification costs \$200 and an application for an optometrist license costs \$245; the combined application was set at \$300. Renewal of TPA certification was \$75 and renewal of an optometrist license was \$150; the combined renewal was set at \$200. Renewal for optometrists

without TPA certification remained at \$150. All applicants for licensure and the vast majority of optometrists licensed in 2005 had another fee decrease at that time.

From 2006 to 2008, the renewal fee was again reduced from \$200 to \$90 for optometrists with TPA certification and from \$150 to \$75 for those without TPA. The initial application and reinstatement fees were permanently reduced. Because the board has benefitted from an accumulated surplus, the increase in fees will not be necessary until 2011-12, but it must begin the process of increasing fees in order to have sufficient revenue to avoid a shortfall in its budget.

Fee increases are related to the costs of the Department allocated to the board, such as operation of the DHP data system and moving and space reorganization expenses. For example, the allocated expenditures for data operations and equipment through VITA were \$33,478 for FY09, enforcement costs were \$54,634 and the moving costs were \$19,449. Currently, the renewal and application fees do not cover the administrative cost of licensing, investigations, or disciplinary proceedings.

Fee increases for licensees regulated by the Board of Optometry are necessary in order for the board and the Department to continue performing essential functions of licensing new optometrists 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 will be examined to determine if fees directly related to those activities are sufficient to cover the expenses. 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.

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 Optometry; 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**

Delays in licensing and investigation could place the citizens in Virginia at health risk as optometrists who should not be practicing would continue to practice and the supply of new licensees needed for eye care would be delayed or curtailed. 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

Optometrists licensed by the board renew their licenses every year by December 31st. Therefore, it is essential to have an increased fee in place by early fall of 2012 in order to prevent the shortfall projected by June 30, 2012 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, Richmond, 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 depending on the amount and nature of the fee increase.