



Proposed Regulation Agency Background Document

Agency name	Board of Audiology & Speech-Language Pathology/Department of Health Professions
Virginia Administrative Code (VAC) citation	18 VAC 30-20-10 et seq.
Regulation title	Regulations Governing the Practice of Audiology & Speech-Language
Action title	Fee increase
Document preparation date	Enter date this form is uploaded on the Town Hall

This information is required for executive review (www.townhall.state.va.us/dpbpages/apaintro.htm#execreview) and the Virginia Registrar of Regulations (legis.state.va.us/codecomm/register/regindex.htm), pursuant to the Virginia Administrative Process Act (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), and the *Virginia Register Form, Style and Procedure Manual* (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.

The Board of Audiology and Speech-Language Pathology is proposing an increase in the renewal and related fees for licensees and amending policies for late renewal and reinstatement for consistency with other professions and with established fee principles for all boards. In addition, the renewal cycle is changed from a biennial to an annual renewal.

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.

Chapter 24 establishes the general powers and duties of health regulatory boards including the responsibility to promulgate regulations, levy fees, administer a licensure and renewal program, and discipline regulated professionals. Excerpts of:

§ 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 and Chapter 25 of this title.*

The statutory authority for licensure and regulation of audiologists and speech-language pathologists is found in Chapter 26 of Title 54.1 of the Code of Virginia:
<http://leg1.state.va.us/000/lst/h3703288.HTM>

The proposed 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.

The Office of the Attorney General has certified that the Board has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law.

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 proposed action is to address the need of the Board of Audiology & Speech-Language Pathology to generate sufficient income to cover expenses for essential functions of the approving applicants for licensure to ensure minimal competency in the professions and for the investigation of complaints against licensees and adjudication of disciplinary cases as required to protect public health and safety in the Commonwealth.

In the analysis of the funding under the current fee structure, a deficit of \$80,387 for the '00-'02 biennium has been reported. The total budget for FY03, including direct and allocated expenditures was \$184,722, but revenues were only \$173,840. That combined with the carry-over debt of the Board resulted in a deficit of (\$91,269) by June 30, 2003. Since licensees of the Board renew biennially in even years, there will not be another renewal date until December 2004, so the estimated income for the Board for FY04 is only \$17,035. Expenditures for FY04 are estimated to be \$165,000, resulting in an estimated deficit by June 30, 2004 of (\$239,234).

§ 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 2000-2002 biennium, the Board of Audiology & Speech-Language Pathology had a deficit, and it is projected that the Board will continue to have a larger deficit through the next two biennia. Since the fees from licensees have fallen short of the operating expenses for the Board, a fee increase is essential.

In addition, the Board proposes to add a fee for approval of a continuing education provider. The process for approving a CE provider entails submission of an application with documentation on the courses, instructors and objectives. Each application must be reviewed by staff for completeness, and staff time is often taken with securing follow-up information. Application packages must be copied and provided to members of the continuing education committee for their review and approval. Those members are entitled to per diem for the time spent in review. If there is no agreement among members of the committee or if the provider disputes the decision of the committee, a special conference committee must be convened to hear the case. That would necessitate expenditures related to bringing board members to Richmond or hearing the case in venue.

In order to have adequate funding for the operation of the Board by the end of fiscal year 2004, it is necessary to promulgate amendments to regulations at the earliest possible date.

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.)

The substantive change is an increase in renewal fees for licensees and a change from a biennial renewal to an annual renewal. Renewal of licensure increases from \$60 biennially to \$75

annually for licensed audiologists and speech-language pathologists and for school speech-language pathologists, it increases from \$60 biennially to \$40 annually.

Other fees that are built on the basis of the renewal fees are increased accordingly, including the application fee, the late fee, and the reinstatement fee. Fees for inactive licensees are typically set at one-half the active fee, so those are also increased. Miscellaneous fees are set to recover actual cost, so the fee for duplicate wall certificate increases from \$15 to \$25. There is a new fee established for board approval of a continuing education sponsor set at \$200.

Rules are changed to require reinstatement after one renewal cycle, which would now be one year. In order to reinstate, documentation of continuing education is required for the number of years in which the license has been lapsed, not to exceed 4 years. After 4 years, a person must reapply and meet the qualifications in effect at the time of the application. It also adds a provision to allow the Board to deny reinstatement to anyone who is determined to have committed an act in violation of law or regulation.

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.

There are no advantages or disadvantages to the public, which is not directly impacted by an increase in fees for audiologists and speech-language pathologists. An additional \$45 per year in the cost of maintaining a license is unlikely to have any effect on the supply of licensees in Virginia nor is it likely to result in an increase in provider services.

The primary advantage to the agency, the Board of Audiology and Speech-Language Pathology, is that increased revenue from fees will offset the deficits that have accumulated over the past three fiscal years. Without an increase, the Board would be faced with severe curtailment of its primary functions of licensing, renewing and disciplining practitioners. There are no disadvantages to the agency or the Commonwealth.

Economic impact

Please identify the anticipated economic impact of the proposed regulation.

<p>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</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</p>
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	necessary functions of regulation; b) The agency will incur some one-time costs (less than \$2,000) for mailings to the Public Participation Guidelines mailing lists, conducting a public hearing, and sending copies of final regulations to regulated entities. Every effort will be made to incorporate those into anticipated mailings and Board meetings already scheduled; there will be on on-going expenditures associated with the fee increase.
Projected cost of the regulation on localities	None
Description of the individuals, businesses or other entities likely to be affected by the regulation	The entities that are likely to be affected by these regulations would be applicants for licensure and licensed audiologists and speech-language pathologists.
Agency's best estimate of the number of such entities that will be affected	Currently, there are 409 licensed audiologists, 2222 licensed speech-language pathologists and 79 school speech-language pathologists. There are approximately 25 applicants for licensure in audiology and 125 for licensure in speech-language pathology each year.
Projected cost of the regulation for affected individuals, businesses, or other entities	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 \$45 a year should not have a negative impact on licensees or their employers.

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.

Funding from fees has failed to keep up with expenditures in the past two biennia. Since the Board had accumulated a surplus from prior years, it has been able to avoid a fee increase up until now. In the '98-'00 biennium, the Board took in \$190,121 in revenue and expended \$257,398. In the '00-'02 biennium, the Board had \$190,815 in revenue and expenses of \$335,455. Cash balance by June 30, 2002 was (\$80,387). In fiscal year '03, revenue was \$173,840 and expenditures were \$184,722, resulting in a cumulative deficit of (\$91,269).

Renewal Fees and Consumer Price Index (CPI) Adjustments

During the past decade, the CPI has increased approximately 37 percent while fees for audiologists and speech-language pathologists in Virginia ***have decreased*** since 1994.

History of renewal Fees for regulants of the Board of Audiology & Speech-Language Pathology

Occupation	Current fee	1998	1996-97*	1994
Speech-language pathologists	\$60/biennium	\$60/biennium	\$30/annual	\$55/annual
Audiologists	\$60/biennium	\$60/biennium	\$30/annual	\$55/annual

*In 1996 only, the Board reduced the renewal fee to \$20 per year, and it was set at \$30 per year thereafter. Fees were reduced in compliance with § 54.1-113 in order to reduce an accumulated surplus and to set fees that did not exceed expenditures by more than 10% of the budget. **This proposal actually represents only a \$20 per year increase over the licensure fee ten years ago.**

Comparison of renewal fees in other states

Currently, Virginia has the lowest renewal fee of any of its neighboring states. In Maryland, the biennial renewal is \$150; in South Carolina, the biennial renewal fee is \$220; in West Virginia, the biennial renewal is \$150; in Kentucky, the annual renewal fee is \$50; in North Carolina, the annual renewal fee is \$40; and in Tennessee, the biennial renewal fee is \$80.

Need for Fee Increases

Fee increases are related to increased need for funds for staff pay and related benefit increases over the past few years and for the general costs of doing business, such as operation of the DHP data system, the health practitioner intervention program, moving offices, and the establishment of a requirement for continuing education. The Finance Office of the Department is projecting a 6.25% cost of living increase for personnel for FY05, a 11.35% increase in VRS contributions, and a 12.5% increase in health insurance. The projected budget of direct and allocated expenditures for this board for FY04 is \$165,000 and for FY05, it is \$193,000. Fee increases for licensees regulated by the Board of are necessary in order for the Board and the Department to continue performing essential functions of approving applicants for licensure and of protecting the public from continued practice by incompetent or unethical practitioners.

*In 1999-2000, the department considered **three** possible solutions to the deficits incurred by several boards. Those same options are available to the Board of Audiology & Speech-Language Pathology and 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 patients 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. General Fund Support.

If the alternative is not to increase professional fees to meet increased cost of operations, then the only other source of funding the cash deficit is the General Fund. To permit General Fund support, the *Code of Virginia* would need to be amended to allow such funding as the *Code* restricts board revenue to fees. There are, however, potential and serious consequences with General Fund support.

1. Increasing General Fund support as more boards acquire deficits in the future.
2. Negative public reaction.
3. The use of general revenues (taxes) to support health regulatory boards which does not target costs to providers and consumers of services.

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

In order to prevent deficit spending, the department would basically 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 patients at risk as licensees who should not be practicing would continue to practice, and the supply of audiologists and speech-language pathologists needed for the health care system 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.

Public comment

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

An announcement of the board's intent to amend its regulations was posted on the Virginia Regulatory Townhall, sent to the Registrar of Regulations, and sent to persons on the Public Participation Guidelines mailing list for the board. The public comment period was from 6/2/03 through 7/2/03. During the 30-day comment period, no comments were received from members of the public.

Family impact

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

In its preliminary 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 approximately \$30 per year to \$75.

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.

For changes to existing regulations, use this chart:

Current section number	Current requirement & Proposed change	Rationale
80	<p>Application fee for fully licensed persons increases from \$100 to \$135; application fee for school speech-language pathologists increases from \$50 to \$70.</p> <p>Renewal of licensure goes from biennial to annual and increases from \$60 to \$75 for fully licensed and \$40 for school s-l-p.</p> <p>Late fee set at \$25 for audiologists and s-l-p; \$15 for school s-l-p.</p> <p>Reinstatement fee for audiologists and s-l-p set at \$135 and \$70 for school s-l-p.</p> <p>Fee for duplicate wall certificate increases from \$15 to \$25.</p> <p>Inactive renewal fees increase from \$30 to \$40 for fully licensed and set at \$20 for school s-l-p.</p> <p>Approval of a continuing education sponsor set at \$200.</p>	<p>Funding from fees has failed to keep up with expenditures in the past two biennia. In the '00-'02 biennium, the Board had \$190,815 in revenue and expenses of \$335,455. Cash balance by June 30, 2002 was (\$80,387). Since revenue from renewal of active licenses represents approximately 80% of the total and most other fees are based on the renewal fee, that fee was set to generate income sufficient to eliminate the deficit and meet expenditures in the next two fiscal years. To lessen the impact of the fee increase and facilitate annual budgets, the Board elected to change from a biennial to an annual renewal.</p> <p>According to the Fee Principles proposed by the agency and accepted by the Executive Branch for setting fees, the application fee should include the cost of a renewal (\$75) (initial license is valid through one renewal cycle), submission and review of application (\$30), and issuance of a license and wall certificate (\$30).</p> <p>Also, the Fee Principles state that a profession with a limited scope of practice, such as the school speech-language pathologist, should pay fees less than those of fully licensed persons who are audiologists or speech-language pathologists. Therefore, their fees for applications, renewal or late payments are set at ½ the amount of fully licensed individuals. Likewise, the Principles state that an inactive licensee should pay approximately ½ the renewal fee of an active licensee.</p> <p>The late fee is set at approximately 1/3 of the renewal fee, and reinstatement should include the late fee, the renewal fee, and the cost of reviewing and processing a reinstatement application. The fee should be approximately the same as an initial application. In current regulation, the reinstatement fee is actually the late fee (\$20) based on the current renewal fee of \$60.</p> <p>The process for approving a CE provider entails submission of an application with documentation on the courses, instructors and objectives.</p>

<p>150</p>	<p>Renewal schedule amended from biennial to annual; rules set for renewal of a lapsed license within one year of expiration</p>	<p>Each application must be reviewed by staff for completeness, and staff time is often taken with securing follow-up information. Application packages must be copied and provided to members of the continuing education committee for their review and approval. Those members are entitled to per diem for the time spent in review. If there is no agreement among members of the committee or if the provider disputes the decision of the committee, a special conference committee must be convened to hear the case. That would necessitate expenditures related to bringing board members to Richmond or hearing the case in venue. \$200 is a minimal fee to offset expenditures related to this activity.</p> <p>The rationale for the annual renewal is related to the percentage of increase in the fee to lessen the impact for licensee. Current regulation states that anyone who fails to renew has an invalid license; proposed regulations provide that a license is lapsed after the expiration date and practice with a lapsed license may subject the licensee to disciplinary action. The Fee Principles recommend consistency in board policies to permit late renewals for one renewal cycle and reinstatement thereafter. Regulations have been amended to adopt such a policy.</p>
<p>160</p>	<p>Reinstatement is required after one renewal cycle, which would be one year. Documentation of continuing education is required for the number of years in which the license has been lapsed, not to exceed 4 years. After 4 years, a person must reapply and meet the qualifications in effect at the time of the application. It also adds a provision to allow the Board to deny reinstatement to anyone who is determined to have committed an act in violation of law or regulation.</p>	<p>The revised regulation allows reinstatement of licensure lapsed beyond one year by payment of the fee, submission of an application and documentation of acquiring CE for the period in which the license was lapsed, not to exceed four years. Currently, if a licensee does not reinstate within two years, he has to reapply for licensure; the amended regulation changes that to four years and authorizes the Board to deny reinstatement if an applicant has committed a violation.</p>