



Virginia
Regulatory
Town Hall

Proposed Regulation Agency Background Document

Agency Name:	Board of Nursing Home Administrators/Department of Health Professions
VAC Chapter Number:	18 VAC 95-20-10 et seq.
Regulation Title:	Regulations Governing the Practice of Nursing Home Administrators
Action Title:	Fee increase
Date:	

This information is required pursuant to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99), and the *Virginia Register Form, Style and Procedure Manual*. Please refer to these sources for more information and other materials required to be submitted in the regulatory review package.

Summary

Please provide a brief summary of the proposed new regulation, proposed amendments to an existing regulation, or the regulation proposed to be repealed. There is no need to state each provision or amendment or restate the purpose and intent of the regulation; instead give a summary of the regulatory action and alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

Amendments to regulation are adopted in order to increase certain fees for the regulants of the Board, including nursing home administrators and preceptors, as necessary to provide sufficient funding for the licensing and disciplinary functions of the Board. An annual renewal fee for a nursing home administrator would be increased from \$125 to \$225 and for a preceptor from \$60 to \$100. The application fee for licensure would increase from \$150 to \$200, but application fees for preceptors and administrators-in-training would remain the same. Other fees would be increased correspondingly; and some miscellaneous fees, such as the duplicate license and wall certificate charge, will be decreased.

Basis

Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority must be provided. Please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law.

Chapter 24 establishes the general powers and duties of health regulatory Boards including the responsibility to promulgate regulations and levy fees.

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

- 1. To establish the qualifications for registration, certification or licensure in accordance with the applicable law which are necessary to ensure competence and integrity to engage in the regulated professions.*
- 2. To examine or cause to be examined applicants for certification or licensure. Unless otherwise required by law, examinations shall be administered in writing or shall be a demonstration of manual skills.*
- 3. To register, certify or license qualified applicants as practitioners of the particular profession or professions regulated by such Board.*
- 4. To establish schedules for renewals of registration, certification and licensure.*
- 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.*
- 7. To revoke, suspend, restrict, or refuse to issue or renew a registration, certificate or license which such Board has authority to issue for causes enumerated in applicable law and regulations.*
- 8. To appoint designees from their membership or immediate staff to coordinate with the Intervention Program Committee and to implement, as is necessary, the provisions of Chapter 25.1 (§ 54.1-2515 et seq.) of this title. Each health regulatory Board shall appoint one such designee.*
- 9. To take appropriate disciplinary action for violations of applicable law and regulations.*

10. *To appoint a special conference committee, composed of not less than two members of a health regulatory Board, to act in accordance with § 9-6.14:11 upon receipt of information that a practitioner of the appropriate Board may be subject to disciplinary action. The special conference committee may (i) exonerate the practitioner; (ii) reinstate the practitioner; (iii) place the practitioner on probation with such terms as it may deem appropriate; (iv) reprimand the practitioner; (v) modify a previous order; and (vi) impose a monetary penalty pursuant to § 54.1-2401. The order of the special conference committee shall become final thirty days after service of the order unless a written request to the Board for a hearing is received within such time. If service of the decision to a party is accomplished by mail, three days shall be added to the thirty-day period. Upon receiving a timely written request for a hearing, the Board or a panel of the Board shall then proceed with a hearing as provided in § 9-6.14:12, and the action of the committee shall be vacated. This subdivision shall not be construed to affect the authority or procedures of the Boards of Medicine and Nursing pursuant to §§ 54.1-2919 and 54.1-3010.*
11. *To convene, at their discretion, a panel consisting of at least five Board members or, if a quorum of the Board is less than five members, consisting of a quorum of the members to conduct formal proceedings pursuant to § 9-6.14:12, decide the case, and issue a final agency case decision. Any decision rendered by majority vote of such panel shall have the same effect as if made by the full Board and shall be subject to court review in accordance with the Administrative Process Act. No member who participates in an informal proceeding conducted in accordance with § 9-6.14:11 shall serve on a panel conducting formal proceedings pursuant to § 9-6.14:12 to consider the same matter.*
12. *To issue inactive licenses and certificates and promulgate regulations to carry out such purpose. Such regulations shall include, but not be limited to, the qualifications, renewal fees, and conditions for reactivation of such licenses or certificates.*

The specific statutory mandate for an increase in fees is found in § 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 by letter 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 provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the proposed regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.

§ 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. It is projected that by the close of the 2000-2002 biennium, the Board of Nursing Home Administrators will incur a deficit and that the deficit will continue to grow through the next biennium. Since the fees from licensees will no longer generate sufficient funds to pay operating expenses for the Board, a fee increase is essential.

The purpose of the proposed amendments is to establish fees sufficient to cover the administrative and disciplinary activities of the Board. Without adequate funding, the licensing of practitioners and preceptors who provide training for those seeking to become administrators could be delayed. The Code of Virginia requires all licensed nursing homes to be under the supervision of a licensed administrator. Sufficient funding is essential to continue the approval of applicants for a training program and for licensure and the investigation of complaints and disciplinary proceedings against practitioners who are accused of substandard care, or violations of law and regulation in order to protect the public health and safety.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement providing detail of the regulatory action's changes.

Section 80 is being amended to comply with a statutory mandate for the Board to provide sufficient funding to cover expenses related to approvals of administrators-in-training (AIT) and preceptors, licensing, investigations and disciplinary proceedings. Annual renewal fees for a nursing home administrator would be increased from \$125 to \$225 and for a preceptor from \$60 to \$100. Fees for late renewal and reinstatement would also be increased proportionately. Application fees for the AIT program and for preceptors would not be changed, but the application fee for a nursing home administrator would increase from \$150 to \$200. Some miscellaneous fees for duplicate licenses and wall certificates would be decreased.

Issues

Please provide a statement identifying the issues associated with the proposed regulatory action. The term "issues" means: 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 include a sentence to that effect.

1) The primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions:

While fee increases proposed by the Board of Nursing Home Administrators should have no specific disadvantage to the consuming public, the ever-increasing shortage of administrators is of concern. As the population ages, there will be an increasing rather than decreasing need for qualified persons to administer those facilities. According to persons in the profession and affiliated with the nursing home industry, there are numerous root causes for the decrease in supply of administrators –relating to the extraordinary regulatory burden of federal and state laws and rules governing the operation of a nursing home, the availability of similar professional opportunities in less-regulated environments (assisted living facilities) and the profession’s lack of appeal to younger persons. While the increased fee will not enhance the prospects for increasing the number of licensees, the Board does not believe that licensure fees alone will result in a reduction in the number of applicants for licensure or the number of licensed persons available to provide administrator services to the public. It is also not anticipated that the proposed fee increases will have any effect on prices for consumers.

There would be disadvantages to the public if the Board took no action to address its deficit by increasing its fees to cover expenses. The only alternative currently available under the Code of Virginia would be a reduction in services and staff, which would result in delays in licensing applicants who would be unable to work and delays in approval or disapproval of candidates to sit for examinations. Potentially, the most serious consequence would be a reduction in or reprioritization of disciplinary cases handled by the Department and the Board. There could be delays in adjudicating cases of substandard practice, resulting in potential danger to patients in the Commonwealth.

Applicants and practitioners licensed by the Board will experience increased renewal fees under the proposed regulations. While that is a disadvantage to the licensees, the alternative of reduced services for the Board would be unacceptable to applicants, licensees and the general public. As a special-fund agency, renewal fees pay the vast majority of the expenses of Board operations, which include inspections, investigation of complaints, adjudication of disciplinary cases, review and approval of applicants, verification of licensure and education to other jurisdictions and entities, and communications with licensees about current practice and regulation.

2) The primary advantages and disadvantages to the agency or the Commonwealth:

As is stated above, the consequence of not increasing fees of the Board would be a reduction in services and staff, resulting in delays in licensing, reductions or delays in the cases investigated and brought through administrative proceedings to a hearing before the. The fees charged to applicants and licensees solely fund the Board and the Department of Health Professions. If higher fees are not adopted, the agency would have to cut its staff, both within the Board of Nursing Home Administrators and within other divisions of the Department of Health Professions.

3) Other pertinent matters of interest to the regulated community, government officials, and the public:

Fiscal Impact

Please identify the anticipated fiscal impacts and at a minimum include: (a) the projected cost to the state to implement and enforce the proposed regulation, including (i) fund source / fund detail, (ii) budget activity with a cross-reference to program and subprogram, and (iii) a delineation of one-time versus on-going expenditures; (b) the projected cost of the regulation on localities; (c) a description of the individuals, businesses or other entities that are likely to be affected by the regulation; (d) the agency's best estimate of the number of such entities that will be affected; and e) the projected cost of the regulation for affected individuals, businesses, or other entities.

Projected cost to the state to implement and enforce:

(i) Fund source: 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 or entities for necessary functions of regulation.

(ii) Budget activity by program or subprogram: There is no change required in the budget of the Commonwealth as a result of this program.

(iii) One-time versus ongoing expenditures: The agency will incur some one-time costs (less than \$1,000) 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.

Projected cost on localities:

There are no projected costs to localities.

Description of entities that are likely to be affected by regulation:

The entities that are likely to be affected by these regulations would be licensed nursing home administrators, preceptors for the administrator-in-training programs (AIT), and applicants for licensure.

Estimate of number of entities to be affected:

Currently, the following are licensed or registered by the Board:

Nursing home administrators	674
Preceptors	180

Projected costs to the affected entities:

The cost for compliance will depend on the type of license held and the particular fee being paid. For example, if a nursing home administrator pays his renewal before the expiration date, he will pay \$225 or an increase of \$100; if the renewal fee is late, he will owe an additional

\$65. For the projected costs to each of the affected entities, see a description of the changes below.

Projected budgets for the Board were based on the number of nursing home administrators continuing to decrease by a small percentage each year. At the end of the '96-'98 biennium, there were 751 licensees, by the end of the '98-'00 biennium, the number had dropped to 740. Revenue projections for this fiscal year and beyond were conservatively estimated based on 715 licensed nursing home administrators. However, a recent data run after the March 31st renewal deadline revealed only 674 licensed administrators. If in fact, the numbers are declining that significantly, the Board may be faced with additional deficits that would have to be addressed with further increases in fees. Other more radical alternatives, such as sunsetting the licensure requirement altogether or eliminating an independent board, would be require further study and statutory changes.

Detail of Changes

Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or cross-walk - of changes implemented by the proposed regulatory action. Where applicable, include citations to the specific sections of an existing regulation being amended and explain the consequences of the proposed changes.

18 VAC 95-20-80. Fees.

Amendments are proposed to establish the fees for licensees as follows:

- ?? The application for licensure will increase from \$150 to \$200.
- ?? Verification of licensure to other states will increase from \$10 to \$25.
- ?? The annual renewal fee for a nursing home administrator license will increase from \$125 to \$225.
- ?? The annual renewal fee for a preceptor will increase from \$60 to \$100.
- ?? The fee for a late renewal of a nursing home license within the one year will increase from \$50 to \$65 or approximately 1/3 of the renewal fee.
- ?? The fee for a late renewal of a preceptor license within the one year will increase from \$25 to \$35 or approximately 1/3 of the renewal fee.
- ?? The reinstatement fee for a nursing home administrator whose license is expired for more than one year will increase from \$225 to \$315 (to include the renewal fee, the late fee and an application review fee).
- ?? The reinstatement fee for a preceptor whose license is expired for more than one year will increase from \$110 to \$150 (to include the renewal fee, the late fee and an application review fee).
- ?? The fee for a duplicate license will decrease from \$25 to \$15 and for a duplicate wall certificate from \$50 to \$25. These fees are consistent with miscellaneous fees in other boards and reflect actual costs of providing those services.

Alternatives

Please describe the specific 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.

In the Code of Virginia, § 54.1-2400 requires the Board 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”. In order to carry out its statutory mandates to protect the public and to levy sufficient fees to cover the direct expenses of the Board and the departmental expenses allocated to the Board, an increase in fees was necessary. Funding from fees has failed to keep up with expenditures in the past two years. Since the Board had accumulated a surplus from prior years, it has been able to avoid a fee increase up until now. By the end of fiscal year '99, the Board had under-spent its budget by \$17, 091, but revenue fell short of the estimate (\$165,400 estimated; \$139,554 realized).

In June 2000, the balance sheet showed that the Board had reduced its estimation of expenditures, but the actual expenditures for the fiscal year exceeded the estimation by \$3,100. Again the revenue realized fell short of projections, resulting in a deficit of almost \$17,000. For FY '01 and FY '02, the projected revenue is \$304,776 and the Board’s projected budget is \$381,185, so it is likely that it will incur a deficit in excess of 17% by 2002.

Renewal Fees and Consumer Price Index (CPI) Adjustments 1990 - 2000

During the period from 1990 to January 2001, the CPI has increased approximately *37.4 percent* while fees for nursing home administrators in Virginia *have not been increased* since 1994. At that time, the renewal fee for nursing home administrators increased from \$100 to \$125 and for fees for preceptors went from \$50 to \$63. In 1998, there was a modest reduction in several fees, including the preceptor renewal which decreased from \$63 to \$60.

Annual Renewal Fees for regulants of the Board of Nursing Home Administrators

Occupation	Current fee	FY '98	FY '96
Nursing home administrators	\$125	\$125	\$125
Preceptors	\$60	\$63	\$63

Comparison of renewal fees in other states

In West Virginia, the application fee is \$400, and the annual renewal fee is \$200 for a nursing home administrator. In Tennessee, the application fee is \$250 and the biennial renewal fee is \$190. In South Carolina, the application fee is \$200 and the annual renewal is \$150; a provisional license costs \$400. In North Carolina, the application fee is \$200 and the biennial renewal fee is \$375. In Maryland, the application fee is \$100; the state exam costs \$125 and the biennial renewal fee is \$100.

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 and the health practitioner intervention program. Other costs are specifically related to the Board of Nursing Home Administrators. For example, in FY '99, the Board overspent its budget for enforcement by \$12,261 and ended the biennium with a deficit of \$3,877 in that line item.

Fee increases for licensees regulated by the Board of Nursing Home Administrators are necessary in order for the Board and the Department to continue performing essential functions of approving administrators-in-training, issuing permits to preceptors, and licensing nursing home administrators and of protecting the public from continued practice by incompetent or unethical practitioners.

Renewal Schedule

Nursing home administrators licensed by the Board renew their licenses every year by March 31st. Therefore, it is essential to have an increased fee in place in 2002 in order to prevent a deficit from occurring by the time licenses are again renewed in the year 2003.

Options for fee increases

The Board considered three options in addressing the imbalance in revenues and expenditures. The bulk of the income is derived from renewal fees, and the renewal fee is used as the basis for calculating the appropriate amount of other fees including those for applications, late renewal and reinstatement. Option I was to increase the annual renewal fee for nursing home administrators to \$200, which would result in compounding the deficit to -\$128,271 by the end of FY03 and -\$185,158 by the end of FY04. That was not an acceptable option to the Board or the Department.

Option II would increase the renewal fee for a nursing home administrator from \$125 to \$225 and a preceptor from \$60 to \$100. The licensure application fee would be increased from \$150 to \$200, but application fees for the AIT (administrator-in training) and a preceptor would not change. With Option II, the resulting **deficit** at the end of FY03 would be approximately -\$45,196; and at the end of FY04, it would be -\$19,008. The Board found several fees in Option II did not follow the Principles for Fee Development adopted by the Department, so a third option was considered.

The only differences between Options II and III are: the preceptor late fee is increased from \$25 to \$35 (approximately 1/3 of the active renewal fee) and the reinstatement fee for a nursing home administrator is increased from \$300 to \$315 and for a preceptor from \$125 to \$150 (to include the renewal fee, the late fee and an application review fee). Since the Board will carry forward a deficit from the previous three fiscal years, it is projected with Option III to continue to have a deficit of approximately -\$18,548 by the end of FY04.

Even with the projected continuation of the deficit, the Board determined that the fee structure adopted is reasonable. In FY03 and FY04, revenue is projected to exceed expenditures.

Therefore, the Board should be able to realize a small surplus by FY05 if not before. The Board was advised that Option III could produce sufficient income to begin in FY03 to eliminate the deficit, and that it was the recommended choice.

Public Comment

Please summarize all public comment received during the NOIRA comment period 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 PPG mailing list for the Board. Public comment was received until November 21, 2001. During the 30-day comment period, there was no comment from the Virginia Health Care Association or any individual or group.

Clarity of the Regulation

Please provide a statement indicating that the agency, through examination of the regulation and relevant public comments, has determined that the regulation is clearly written and easily understandable by the individuals and entities affected.

The proposed regulations were considered in an open meeting, first with the Regulatory Committee and then with the full Board. There were no questions or comments about the need for clarification. The Assistant Attorney General who provides counsel to the Board has been involved during the development and adoption of proposed regulations to ensure clarity and compliance with law and regulation.

Periodic Review

Please supply a schedule setting forth when the agency will initiate a review and re-evaluation to determine if the regulation should be continued, amended, or terminated. The specific and measurable regulatory goals should be outlined with this schedule. The review shall take place no later than three years after the proposed regulation is expected to be effective.

Public participation guidelines require the Board to review regulations each biennium or as required by Executive Order. Regulations are currently under review and will be reviewed again during the 2004-05 fiscal year.

Family Impact Statement

Please provide an analysis of the proposed regulatory action that assesses the potential impact on the institution of the family and family stability including the extent to which the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

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 an impact on disposable family income, as nursing home administrators and preceptors will experience an increase in the cost of licensure. Compared to other costs of doing business or compliance with state and federal rules for long term care facilities, administrator licensure fees are relatively modest.