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Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Board for Hearing Aid Specialists and Opticians
Virginia Administrative Code (VAC) citation(s)	18 VAC 80-20
Regulation title(s)	Hearing Aid Specialists Regulations
Action title	HAS Fee Adjustment 2019
Date this document prepared	April 19, 2019

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Virginia Register Form, Style, and Procedure Manual for Publication of Virginia Regulations*.

Brief Summary

Please provide a brief summary (preferably no more than 2 or 3 paragraphs) of the subject matter, intent, and goals of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation).

The Board for Hearing Aid Specialists and Opticians (“the Board”) seeks to amend its current Hearing Aid Specialists regulations (“regulations”) to adjust its licensing fee structure. The Board must establish fees adequate to support the costs of the Board operations and a proportionate share of the Department’s operations. By the close of the next biennium, fees will not provide adequate revenue for those costs.

The Department of Professional and Occupational Regulation (“DPOR”) is funded entirely from revenue collected for license applications, renewal, examination fees, and other licensing fees and receives no general fund money. DPOR is self-supporting and must collect adequate revenue to support its mandated and approved activities and operations. Fee revenue collected on behalf of the various boards funds the Department’s authorized special revenue appropriation.

The Board has no other source of revenue from which to fund its operations.

Acronyms and Definitions

Please define all acronyms or technical definitions used in the Agency Background Document. .

“Department” and “DPOR” means the Department of Professional and Occupational Regulation.

“Board” means the Board for Hearing Aid Specialists and Opticians.

Mandate and Impetus

Please identify the mandate for this regulatory change, and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, board decision, etc.). For purposes of executive branch review, “mandate” has the same meaning as defined in Executive Order 14 (as amended, July 16, 2018), “a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part.”

The proposed regulatory action is mandated by the following sections of the Code of Virginia. To comply with these statutes, the Board evaluates its current and projected financial position, and determines the type of fees and amounts to be established for each fee that will provide revenue sufficient to cover its expenses.

§ 54.1-113 (Callahan Act). Regulatory boards to adjust fees – Following the close of any biennium, when the account for any regulatory board within the Department . . . 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.

§ 54.1-201.4 describes each regulatory board’s power and duty to “levy and collect fees for the certification or licensure and renewal that are sufficient to cover all expenses for the administration and operation of the regulatory board and a proportionate share of the expenses of the Department . . .”

§ 54.1-304.3 describes the power and duty of the DPOR Director to “collect and account for all fees prescribed to be paid into each board and account for and deposit the moneys so collected into a special fund from which the expenses of the Board, regulatory boards, and the Department shall be paid . . .”

§ 54.1-308 provides for compensation of the Director, employees, and board members to be paid out of the total funds collected. This section also requires the Director to maintain a separate account for each board showing moneys collected on its behalf and expenses allocated to the board.

These Code sections require the Department to:

- pay expenses of each board and the Department from revenues collected;
- establish fees adequate to provide sufficient revenue to pay expenses;
- account for the revenues collected and expenses charged to each board; and
- revise fees as necessary to ensure that revenue is sufficient but not excessive to cover all expenses.

To comply with these requirements, the Department:

- Accounts for the revenue collected for each board distinctly;
- Accounts for direct board expenses for each board, and allocates a proportionate share of agency operating expenses to each board;

- Reviews the actual and projected financial position of each board biennially to determine whether revenues are adequate, but not excessive, to cover reasonable and authorized expenses for upcoming operating cycles; and
- Recommends adjustments to fees to respond to changes and projections in revenue trends and operating expenses. If projected revenue collections are expected to be more than sufficient to cover expenses for upcoming operating cycles, decreases in fees are recommended. ***If projected revenue collections are expected to be inadequate to cover operating expenses for upcoming operating cycles, increases in fees are recommended.***

Fee adjustments are mandatory in accordance with these Code sections. The Board exercises minimal discretion on how the fees are adjusted by determining the amount of adjustment for each type of fee. The Board makes its determination based on the adequacy of the fees to provide sufficient revenue for upcoming operating cycles.

Legal Basis

Please identify (1) the agency or other promulgating entity, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia or Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency or promulgating entity's overall regulatory authority.

- 1) Board for Hearing Aid Specialists and Opticians
- 2) § 54.1-113 (Callahan Act) requires regulatory boards to periodically review and adjust fees
 § 54.1-201.4 provides the authority to regulatory boards to levy and collect fees.
 § 54.1-304.3 describes the authority of DPOR to collect and account for fees
 § 54.1-308 requires costs to be paid by regulatory boards

All of these provisions of the Code of Virginia are mandatory.

Purpose

Please describe the specific reasons why the agency has determined that this regulation is essential to protect the health, safety, or welfare of citizens. In addition, please explain any potential issues that may need to be addressed as the regulation is developed.

The Board must establish fees adequate to support the costs of the Board operations and a proportionate share of the Department's operations. By the close of the next biennium, fees will not provide adequate revenue for those costs.

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In 2014, the Board initiated a fee change for Hearing Aid Specialists in anticipation that the change would be needed to maintain Callahan Act required balances. In 2016, at the request of the Governor, the Board reassessed its financial position and determined the fee increase was still needed. Following that

decision, the fee increase regulatory action remained in the final stage, in the Secretary of Commerce and Trade’s office for review, until December 2018.

In the meantime, the Department was subject to a review by the Joint Legislative Audit and Review Commission (JLARC) in 2018. In its report, JLARC stated “DPOR should revise the fee change using more realistic expense projections . . . If, however, DPOR determines that the fee change is not needed in the near term, the fee change could be withdrawn.” As a result, in December 2018, DPOR reassessed the expense projections and advised that while a fee change was still necessary, the amount of proposed fee adjustments would be reviewed to determine if it should be modified.

With the effective date for new fees anticipated to be in FY2021, it will have been 18 years since fees for Hearing Aid Specialists were decreased significantly to allow the Board to spend down its accumulated cash balance. At that time it was anticipated that fees would increase in approximately six years. The Department generally tries to structure fees so that they will cover the Board’s expenses for a period of 4-8 years, with the assumption that revenues are adequate to cover operating expenses but are not excessive. It is generally anticipated that each board would need to reassess its fee structure and raise fees in response to ongoing cost increases about every 5-6 years. One-time expenses or unusual cost increases may shorten that time period.

The Department is always concerned about efficiency of operations as a means of maintaining or reducing costs, and has implemented budget review, approval, and monitoring processes, and performance measurement to monitor targets and goals.

While cost increases are not the sole reason for the fee increases, some cost categories have increased significantly since this program’s last fee adjustment nearly two decades ago. Examples of increased costs from FY2005 to FY2018 include Information Technology which increased 159%, Building Rent which increased 82% and staff expenses which increased 80%.

Substance

Please briefly identify and explain the new substantive provisions that are being considered, the substantive changes to existing sections that are being considered, or both.

The Board reviewed the fees listed in 18 VAC 80-20-70, and based on projected revenues and expenses, developed a fee schedule that meets the requirements of the applicable statutes while being the least burdensome to the licensee population.

The following is the expected range of the proposed fee increases to be made in this regulatory action.

Range of Fees:

Fee Type	Current Fee	New Fee
New Applicant	\$ 30	\$ 85
Temporary Permit (New Applicant)	\$ 30	\$ 85
Renewal	\$ 20	\$ 100
Reinstatement	\$ 20	\$ 85

Alternatives

Please describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulatory change.

The Department has considered the following alternatives to increasing fees for Hearing Aid Specialists:

- **Reduce services.** Because the regulatory activities conducted by the Board are mandated by statute, this is not considered a viable alternative. In addition, reductions in services would result in delays in issuing licenses, creating barriers to applicants' and licensees' ability to work, and would decrease the Department's effectiveness in ensuring that licensees conduct their activities in a manner adequate to protect the public health, safety, and welfare.
- **Obtain a Treasury loan to fund operations.** The Department could request a loan from the general fund to cover the Board's deficit and supplement its ongoing operations. However, this would be a short-term solution only, and would only delay the need for fee increases. When eventually implemented, fee increases would need to be even greater to provide for loan repayment.
- **Supplement Board activities with general funds.** The Department currently receives no general fund revenue, and this would require a change in the Code of Virginia and the Appropriation Act. The Department's boards are intended to be self-funding pursuant to §§ 54.1-113, 54.1-201, 54.1-304.3, and 54.1-308 of the Code of Virginia. Use of general funds to support Board operations does not appear to be an appropriate use of taxpayer dollars.

Periodic Review and Small Business Impact Review Announcement

This NOIRA is not being used to announce a periodic review or a small business impact review.

Public Participation

Please indicate how the public should contact the agency to submit comments on this regulation, including ideas to assist the agency in the development of the regulation and the costs and benefits of the alternatives stated in this notice or other alternatives.

The Board is seeking comments on this regulation, including but not limited to: ideas to be considered in the development of this regulation, the costs and benefits of the alternatives stated in this background document or other alternatives, and the potential impacts of the regulation. Also, the agency/board 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) the probable effect of the regulation on affected small businesses; and 3) the description of less intrusive or costly alternatives for achieving the purpose of the regulation.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at <https://www.townhall.virginia.gov>.

Anyone wishing to submit comments may do so by one of the following methods:

- Via the **REGULATORY TOWN HALL website** at <http://townhall.virginia.gov/>

OR send to the attention of:

Stephen Kirschner, Regulatory Operations Administrator
Board for Hearing Aid Specialists and Opticians
Department of Professional and Occupational Regulation

By E-MAIL to:

HASOPT@dpor.virginia.gov

By FAX to:

(866) 245-9693

By U.S. Mail to:

9960 Mayland Drive, Suite 400
Richmond, VA 23233

Written comments must include the name and address of the commenter. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

A public hearing will not be held following the publication of the proposed stage of this regulatory action.