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Proposed Regulation Agency Background Document

Agency name	Board for Hearing Aid Specialists and Opticians
Virginia Administrative Code (VAC) Chapter citation(s)	18 VAC 80-20
VAC Chapter title(s)	Hearing Aid Specialists Regulations
Action title	Fee Adjustment
Date this document prepared	August 14, 2020

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 (1VAC7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the 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. Currently, fees do 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

Define all acronyms used in this form, and any technical terms that are not also defined in the “Definitions” section of the regulation.

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

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

Mandate and Impetus

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, or board decision). 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 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.

§ 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 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 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.

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 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." After the JLARC report was issued, DPOR reassessed the expense projections and advised that while a fee change was still necessary, the proposed fees 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 and 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 costs 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 Board's last fee adjustment. 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%.

Legal Basis

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

Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it's intended to solve.

The Board must establish fees adequate to support the costs of the Board operations and a proportionate share of the Department’s operations. Current fees do 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.

Substance

Briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the “Detail of Changes” section below.

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 regulant 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 Fees
New Applicant	Hearing Aid Specialist	30	125
New Applicant Temporary Permit	Hearing Aid Specialist	30	125
Renewal	Hearing Aid Specialist	20	125
Reinstatement	Hearing Aid Specialist	20	125

Issues

Identify the issues associated with the regulatory change, 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, include a specific statement to that effect.

The *Code of Virginia* establishes the Board as the state agency that oversees licensure of hearing aid specialists providing services in Virginia. The Board’s primary mission is to protect the citizens of the Commonwealth by prescribing requirements for minimal competencies; by prescribing standards of conduct and practice; and by imposing penalties for not complying with the regulations. Further, the *Code of Virginia* requires the Department to comply with the Callahan Act. The proposed fee adjustments will ensure that the Board has sufficient revenues to fund its operating expenses. Without taking any action, the Board will have a -\$43,355 balance at the end of the biennium, with a -14.6% Callahan act percentage.

The advantages of this change to the public is that the Board will continue to be financially solvent. There are no disadvantages to the public or the Commonwealth in raising the Board’s fees as proposed here.

Requirements More Restrictive than Federal

Identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements, or no requirements that exceed applicable federal requirements, include a specific statement to that effect.

No federal requirements have been identified.

Agencies, Localities, and Other Entities Particularly Affected

Identify any other state agencies, localities, or other entities particularly affected by the regulatory change. “Particularly affected” are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. “Locality” can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.

Other State Agencies Particularly Affected

There are no other state agencies impacted by this change.

Localities Particularly Affected

There are no localities particularly impacted by this change.

Other Entities Particularly Affected

There are no other entities impacted by this change.

Economic Impact

Pursuant to § 2.2-4007.04 of the Code of Virginia, identify all specific economic impacts (costs and/or benefits), anticipated to result from the regulatory change. When describing a particular economic impact,

specify which new requirement or change in requirement creates the anticipated economic impact. Keep in mind that this is change versus the status quo.

The proposed change will increase fees in the Hearing Aid Specialists regulations under the Board for Hearing Aid Specialists and Opticians. This change will ensure that revenues are sufficient but not excessive to cover the Board's ongoing operating expenses. The last fee change was a fee decrease that was effective in October 2003. The proposed fee increases are necessary to recover from the current cash balance deficit and to collect sufficient revenue to pay for ongoing operational expenses.

All costs incurred in support of board activities and regulatory operations are paid by the Department of Professional and Occupational Regulation (DPOR) and funded through fees paid by applicants and regulants. All boards within DPOR must operate within the Code provisions of the Callahan Act (54.1-113), and the general provisions of 54.1-201. Each regulatory program's revenues must be adequate to support both its direct costs and a proportional share of agency operating costs. DPOR allocates costs to its regulatory programs based on consistent, equitable, and cost-effective methodologies. The Board has no other source of income.

Impact on State Agencies

<p><i>For your agency:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including: a) fund source / fund detail; b) delineation of one-time versus on-going expenditures; and c) whether any costs or revenue loss can be absorbed within existing resources</p>	<p>Revenue from licensing fees is expected to increase to sufficiently meet the needs of the Board and cover the expenses. Biennial revenue increases of approximately \$100,600 are expected.</p>
<p><i>For other state agencies:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures.</p>	<p>There are no savings and no changes to costs, fees, or revenues of other state agencies resulting from this regulatory change.</p>
<p><i>For all agencies:</i> Benefits the regulatory change is designed to produce.</p>	<p>The change will enable the Board to eliminate the funding deficit and to collect sufficient revenue to pay for ongoing operational expenses. The Board has no other source of revenue/funding and therefore requires sufficient fee revenue to meet the expenses.</p>

Impact on Localities

<p>Projected costs, savings, fees or revenues resulting from the regulatory change.</p>	<p>There are no savings and no changes to costs, fees, or revenues of localities resulting from this regulatory change.</p>
<p>Benefits the regulatory change is designed to produce.</p>	<p>There are no benefits to localities resulting from this change.</p>

Impact on Other Entities

<p>Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect.</p>	<p>The regulatory change will affect all licensed Hearing Aid Specialists and all applicants for licensure as a Hearing Aid Specialist. No other individuals, businesses or other entities are affected.</p>
<p>Agency's best estimate of the number of such entities that will be affected. Include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that:</p> <ul style="list-style-type: none"> a) is independently owned and operated and; b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million. 	<p>As of 7/1/2020, there are 794 licensed hearing aid specialists 48 temporary hearing aid specialist permit holders in Virginia. On average there are approximately 73 hearing aid specialist applicants and 53 temporary permit holder applicants annually.</p>
<p>All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Be specific and include all costs including, but not limited to:</p> <ul style="list-style-type: none"> a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change; c) fees; d) purchases of equipment or services; and e) time required to comply with the requirements. 	<p>The fees are increasing from \$30 to \$125 to apply for a license and from \$20 to \$125 to renew a license for two years. The temporary permit application fee is changing from \$30 to \$125. No other costs to individuals are expected from this change. The other profession within the Board is Opticians and application and renewal fees are currently \$100.</p>
<p>Benefits the regulatory change is designed to produce.</p>	<p>The change will enable the Board to eliminate the funding deficit and to collect sufficient revenue to pay for ongoing operational expenses. The affected individuals will therefore be able to continue to be licensed in Virginia.</p>

Alternatives to Regulation

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 the Board:

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 citizen's 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 repayment of the loan.

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 per §§ 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.

Regulatory Flexibility Analysis

Pursuant to § 2.2-4007.1B of the Code of Virginia, describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the regulatory change.

The adjustment of fees is mandated by statute. Consequently, there is no flexibility.

Periodic Review and Small Business Impact Review Report of Findings

If you are using this form to report the result of a periodic review/small business impact review that is being conducted as part of this regulatory action, and was announced during the NOIRA stage, indicate whether the regulatory change meets the criteria set out in Executive Order 14 (as amended, July 16, 2018), e.g., is necessary for the protection of public health, safety, and welfare; minimizes the economic impact on small businesses consistent with the stated objectives of applicable law; and is clearly written and easily understandable.

In addition, as required by § 2.2-4007.1 E and F of the Code of Virginia, discuss the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, discuss why the agency's decision, consistent with applicable law, will minimize the economic impact of regulations on small businesses.

1) There is a continued need for regulation of the hearing aid specialist profession. Due to the personal and physical nature of these professions, at least minimal competency of those engaged in the profession is necessary to protect the health, safety, and welfare of the public. Since the vast majority of regulants either are or work for small businesses, this necessitates the continued regulation of small businesses. The proposed amendments balance the need for minimally competent professionals with the need for simple and clear regulations. The amendments add clarity to the regulations, and where possible, regulations are repealed or incorporated into other regulations.

- 2) There were no comments regarding this fee action
- 3) This regulatory action is a simple fee adjustment.
- 4) The Board has no knowledge of the proposed regulations overlapping, duplicating, or conflicting with any federal or state law or regulation.
- 5) The last fee related regulatory change was made in 2003.

Public Comment

Summarize all comments received during the public comment period following the publication of the previous stage, and provide the agency response. Include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. If no comment was received, enter a specific statement to that effect.

None.

Public Participation

Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below.

The Board is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal, (ii) any alternative approaches, (iii) the potential impacts of the regulation, and (iv) the agency's regulatory flexibility analysis stated in that section of this background document.

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://townhall.virginia.gov>. Comments may also be submitted by mail, email or fax to Stephen Kirschner, Executive Director, 9960 Mayland Drive, Suite 400, Richmond, Virginia 23233, Fax: 866-245-9693, Email: hasopt@dpor.virginia.gov. 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 this stage of this regulatory action.

Detail of Changes

List all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Use all tables that apply, but delete inapplicable tables.

If an existing VAC Chapter(s) is being amended or repealed, use Table 1 to describe the changes between existing VAC Chapter(s) and the proposed regulation. If existing VAC Chapter(s) or sections are

being repealed and replaced, ensure Table 1 clearly shows both the current number and the new number for each repealed section and the replacement section.

Table 1: Changes to Existing VAC Chapter(s)

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
18VAC80-20-70		<p>The new applicant fee is \$30.</p> <p>The new applicant by reciprocity fee is \$30.</p> <p>The new applicant temporary permit fee is \$30.</p> <p>The renewal fee is \$20.</p> <p>The reinstatement fee is \$50.</p>	<p>The new application fee is increased from \$30 to \$125 to facilitate compliance with the Callahan Act.</p> <p>The new application by reciprocity fee is increased from \$30 to \$125 to facilitate compliance with the Callahan Act.</p> <p>The new application temporary permit fee is increased from \$30 to \$125 to facilitate compliance with the Callahan Act.</p> <p>The renewal fee is increased from \$20 to \$125 to facilitate compliance with the Callahan Act.</p> <p>The reinstatement fee is increased from \$50 to \$125 to facilitate compliance with the Callahan Act.</p>