

**PRELIMINARY DETERMINATION
NOTICE OF INTENDED REGULATORY ACTION**

**DEPARTMENT OF HEALTH PROFESSIONS
BOARD OF MEDICINE**

***18 VAC 85-20-10 et seq. Regulations Governing the Practice of Medicine,
Osteopathy, Podiatry and Chiropractic***

18 VAC 85-31-10 et seq. Regulations Governing the Practice of Physical Therapy

***18 VAC 85-40-10 et seq. Regulations Governing the Practice of Respiratory Care
Practitioners***

***18 VAC 85-50-10 et seq. Regulations Governing the Practice of Physician
Assistants***

***18 VAC 85-80-10 et seq. Regulations Governing the Licensure of Occupational
Therapists***

***18 VAC 85-101-10 et seq. Regulations Governing the Licensure of Radiologic
Technologist Practitioners***

***18 VAC 85-110-10 et seq. Regulations Governing the Practice of Licensed
Acupuncturists***

ITEM 1: LEGAL AUTHORITY THE REGULATION

Regulations for the Board of Medicine are promulgated under the general authority of Title 54.1, Chapter 24 of the Code of Virginia.

Chapter 24 establishes the general powers and duties of health regulatory boards including the responsibility to promulgate regulations in accordance with the Administrative Process Act which are reasonable and necessary and the authority to **levy and collect fees** that are **sufficient to cover all expenses** for the administration of a regulatory program.

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

5. To levy and collect fees for application processing, examination, registration, certification or licensure and renewal that are sufficient to cover all expenses for the administration and operation of the Department of Health Professions, the Board of Health Professions and the health regulatory boards.

6. To promulgate regulations in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.) which are reasonable and necessary to administer effectively the regulatory system. Such regulations shall not conflict with the purposes and intent of this chapter or of Chapter 1 (§ 54.1-100 et seq.) and Chapter 25 (§ 54.1-2500 et seq.) of this title.

The **contemplated regulation is mandated by § 54.1-113**; however the Board must exercise some discretion in the amount and type of fees which will be increased in order to comply with the statute.

§ 54.1-113. Regulatory boards to adjust fees.--Following the close of any biennium, when the account for any regulatory board within the Department of Professional and Occupational Regulation or the Department of Health Professions maintained under § 54.1-308 or § 54.1-2505 shows expenses allocated to it for the past biennium to be more than ten percent greater or less than moneys collected on behalf of the board, it shall revise the fees levied by it for certification or licensure and renewal thereof so that the fees are sufficient but not excessive to cover expenses.

ITEM 2: POTENTIAL ISSUES TO BE ADDRESSED

The issue to be addressed is the need of the Board of Medicine to increase their fees to cover expenses for essential functions of licensing, investigation of complaints against doctors, interns and residents and other practitioners licensed by the Board, adjudication of disciplinary cases, and the administration of examinations.

In its analysis of the funding under the current fee structure for programs under the Board of Medicine, the following deficit has been projected:

<u>FY Ending</u>	<u>Board</u>	<u>Amount</u>	<u>Percent</u>
6/30/02	Medicine	-\$861,956	-09.3%

§ 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 2002 fiscal year, the Board of Medicine will incur a deficit of \$861,956 or 9.3% of its total budget and that the deficit will continue to escalate. Since the fees from licensees will no longer generate sufficient funds to pay operating expenses for the Board, consideration of a fee increase is essential. (See discussion of renewal schedule in Item 3)

No preliminary regulatory language has been developed; the agency will develop alternative fee structures which will address the deficit in funding for the Board to consider in its adoption of proposed regulations.

ITEM 3: REASONING FOR THE CONTEMPLATED REGULATION

Despite the efficiencies and reductions in staff (MEL from 132 to 119) which the Department and the Board have undertaken in the past five years, funding from fees has failed to keep up with expenditures.

Biennial Renewal Fees for regulants of the Board of Medicine

Occupation	Current fee	FY '98	FY '96
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Doctors of medicine, osteopathy, podiatry, chiropractic	\$125	\$125	\$125
Interns and residents	\$10	\$10	\$10
Physical therapist	\$100	\$100	\$125
Physical therapist assistant	\$70	\$70	\$80
Physician assistant	\$80	\$80	\$80
Respiratory care practitioner	\$50	\$50	\$50
Occupational therapist	\$85	\$85	\$85
Radiologic technologist	\$75	\$75	\$80
Licensed acupuncturist	\$85	\$85	\$85

Renewal fees for doctors and for interns and residents have not increased since 1990. Renewal fees for physical therapists and physical therapists assistants were decreased in 1998.

Renewal Schedule

Physicians licensed by the Board of Medicine renew their licenses every even year (2000) in their birth month. **Therefore, it is essential to have an increased fee in place before January 31, 2000 - which is the date on which the licenses begin to expire - in order to prevent a significant deficit from occurring by the time licenses are again renewed in the year 2002.** If the fee increase is not effective before the 2000 renewal cycle, the deficit is projected to be \$861,956 by the end of the 2000-2002 biennium.

During the 1999 – 2000 fiscal year, the Board expects to have regulations in effect requiring 100 hours of continuing competency courses or activities for each biennium. That requirement will cause an unknown number of practitioners to seek an inactive license on their next renewal. The active renewal fee in Virginia is \$125/biennium; the proposed inactive renewal fee is \$100/biennium. If the percentage of inactive licensure in Virginia rose to the average of similar states (approximately 14%), the loss of revenue for the Board in a biennium would be \$92,673. That potential loss of revenue is an unknown factor in the agency projections for the next two biennia.

Comparison of renewal fees in other states

Virginia’s renewal fee for physicians is the 3rd lowest in the nation. In neighboring states, the fees are \$100/year in NC and KY; \$200/every 2 years in WV; and \$400/every 2 year in MD. In CA and NY, the renewal fee is \$600 every 2 years.

Fees for other professionals regulated by the Board have not been compared, but an analysis will be performed during the consideration and development of proposed regulations.

Need for Fee Increases

Fee increases are related to increased need for funds for staff pay and related benefit increases included in the Governor's budget and for the general costs of doing business beyond the department's control (Y2K compliance, the health practitioner intervention program, installation of new computer system, etc.)

For the Board of Medicine, significant new costs will be associated with the implementation of the physician profile system, required by SB 660 of the 1998 General Assembly and SB 975 which added the podiatrists to the required system for public disclosure of data in 1999. Estimates from the Fiscal Impact Statement prepared by the Department of Planning and Budget in 1998 were that the system would cost at least \$350,000 (the figure was closer to \$500,000 for a similar system in Massachusetts) to initiate and \$250,000 per year to sustain. At that time, it was recognized in the FIS that renewal fees for physicians would probably need to be increased by at least \$25, just to cover the expenditures for the profiling system.

Attached is a chart of expenses, revenues and percentage of deficit for the Board of Medicine – over the past two biennia, for the current biennium, and the projection for the next biennia.

Fee increases for licensees regulated by the Board of Medicine are necessary in order for the Board and the Department to continue performing essential functions of licensing new physicians and other practitioners of the healing arts and of protecting the public from continued practice by incompetent or unethical practitioners.

ITEM 4: ALTERNATIVES CONSIDERED

The department considered **three** possible solutions to the deficits in the Board of Medicine.

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 medical care. (In a September 7, 1998 issue of Medical Economics, the median gross practice receipts for doctors in the mid-South is \$267,840 a year). The cost of operation of regulatory boards (\$12.5 million annually for over 230,000 providers) will not affect the cost or access to health care. However, failure to fully fund the services through fees will have a detrimental effect on quality.

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 general, the Department's overall expenditures have been very moderate over the past six years. Total expenses for FY 93 were \$8.2 million, for FY 98 \$10.6 million an increase of 29.2 percent for the period or just under 4.5 percent each year, just slightly more than the amount of employee pay raises and benefit increases for the period.

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**
- **Approval of residents and interns**

Delays in licensing and investigation could place the general population at health risk as physicians who should not be practicing would continue to practice, and the supply of new licensees needed for the health 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.

Department of Health Professions
Schedule for Promulgation of Regulations on Fees for the
Virginia Board of Medicine

Submission of pre-NOIRA to DPB & SHHR **3/8/99**

Submission of NOIRA to Register **3/24/99**

Publication of NOIRA	4/12/99
End of 30-day Comment Period	5/12/99
Adoption of proposed regulations	6/3/99
Pre-Submission packages to DPB & SHHR	6/10/99
Submission of proposed regulations to Register	8/11/99
Publication of proposed regulations	8/30/99
End of 60-day comment period	10/29/99
Adoption of final regulations	11/19/99
Submission of final regulations to Register	12/1/99
Publication of final regulations	12/20/99
Final effective dates	1/20/00