

REGISTRAR'S SUBMISSION PACKAGE

BOARD OF LICENSED PROFESSIONAL COUNSELORS, MARRIAGE AND FAMILY THERAPISTS AND SUBSTANCE ABUSE PROFESSIONALS

18 VAC 115-20-10 et seq.;
Regulations Governing the Practice of Professional Counseling

18 VAC 115-30-10 et seq.;
Regulations Governing the Certification of Substance Abuse Counselors

18 VAC 115-40-10 et seq.;
Regulations Governing the Certification of Rehabilitation Providers

18 VAC 115-50-10 et seq.;
Regulations Governing the Practice of Marriage and Family Therapy

18 VAC 115-60-10 et seq.;
**Regulations Governing the Practice of Licensed Substance Abuse Treatment
Practitioners¹**

Analysis of Proposed Amendments to Regulation

1. Basis of Regulation:

Chapter 24 of Title 54.1 of the Code of Virginia 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.

2. Statement of Purpose:

The purpose of the proposed amendments is to establish fees sufficient to cover the administrative and disciplinary activities of the Board of Licensed Professional Counselors, Marriage and Family Therapists and Substance Abuse Professionals. Without adequate funding, the licensing of professional counselors, marriage and family therapists and substance abuse treatment practitioners, and the certification of substance abuse counselors and rehabilitation providers could be delayed. In addition, sufficient funding is essential to carry out

¹ This regulation is not yet in effect. It was submitted to the Department of Planning and Budget and the Secretary of Health and Human Resources on January 5, 1999. The Board has not yet been granted permission to publish the proposed regulation.

the investigative and disciplinary activities of the Board in order to protect the public health, safety and welfare.

3. Substance of Regulations:

Regulations Governing the Practice of Professional Counseling

18 VAC 115-20-20. Fees required by the Board.

Fees are amended as follows:

- A renewal fee increase is proposed from the current \$75 biennial renewal to a \$105 annual renewal. The proposed renewal fee reflects the cost of the administrative and disciplinary activities of the Board and the allocated costs of the Department.
- The proposal establishes new initial licensure by examination and initial licensure by endorsement fees of \$65 to cover the licensure fee for ½ of a renewal period, which is the average initial licensure period for new licensees, and a \$10 fee for a wall certificate.
- The cost for producing and sending a duplicate license has been reduced, so the proposed fee decreases from \$15 to \$5 and reflects the actual cost.
- An increase in the cost for verification of licensure to another jurisdiction from \$10 to \$25 is proposed to cover the administrative costs of retrieving and copying a file from the microfilm archive, and the mailing costs of the file.
- An increase in the late renewal fee from \$10 to \$35 is proposed to establish a fee that is 35% of the renewal fee in accordance with the agency's *Principles for Fee Development*.
- A new fee of \$165 is proposed for reinstatement of a license that has lapsed beyond one full renewal period. This fee is based on the cost of Board review of the reinstatement application plus ½ of the annual renewal fee to cover the average time remaining in a renewal period, plus the penalty fee for late renewal.
- The proposed returned check fee of \$25 is estimated to be the actual administrative costs for processing and collecting on a returned check; it is proposed to be the same fee for all boards within the Department.
- A new fee of \$500 is proposed for reinstatement of a license that has been revoked or suspended following disciplinary action. This fee is based on the cost of the review of the background investigation and reinstatement application, and

the cost of holding an informal conference to consider the reinstatement.

- A change is proposed for the payment instruction to clarify that some licensure processes are performed by a vendor, requiring payment of the fee to the vendor and not the Board, as set forth in the application instructions.

18 VAC 115-20-40. General requirements.

Minor changes are proposed to conform the language in this section with that in 18 VAC 115-20-20.

18 VAC 115-20-100. Biennial renewal of licensure

Minor changes are proposed to indicate the new annual renewal period.

18 VAC 115-20-110. Late renewal; reinstatement.

Amendments are proposed to change the current term for late renewal without reinstatement from four years to one year. Beyond the one year renewal period, a reinstatement procedure is proposed, requiring application for reinstatement and payment of a reinstatement fee. The reinstatement fee is established based on the administrative and review costs which are the same as that determined for initial licensure, plus a late renewal fee. This is in conformance with the *Principles for Fee Development* for all boards within the Department.

18 VAC 115-20-150. Reinstatement following disciplinary action.

A minor change is proposed to apply the same reinstatement procedure and fee to licenses that have been suspended, revoked or denied renewal.

Regulations Governing the Certification of Substance Abuse Counselors

18 VAC 115-30-20. Fees required by the Board.

Fees are amended as follows:

- A renewal fee increase is proposed from the current \$40 biennial renewal to a \$55 annual renewal. The proposed renewal fee reflects the cost of the administrative and disciplinary activities of the Board and the allocated costs of the Department.
- The proposal establishes new initial licensure by examination and initial licensure by endorsement fees of \$40 to cover the licensure fee for ½ of a renewal period, which is the average initial licensure period for new licensees, and a \$10 fee for a wall certificate.

- The cost for producing and sending a duplicate license has been reduced, so the proposed fee decreases from \$15 to \$5 and reflects the actual cost.
- An increase in the late renewal fee from \$10 to \$20 is proposed to establish a fee that is 35% of the renewal fee in accordance with the agency's *Principles for Fee Development*.
- A new fee of \$100 is proposed for reinstatement of a certificate that has lapsed beyond one full renewal period. This fee is based on the cost of Board review of a reinstatement application (\$50), plus ½ of the annual renewal fee, plus the penalty fee for late renewal.
- The proposed returned check fee of \$25 is estimated to be the actual administrative cost for processing and collecting on a returned check; it is proposed to be the same fee for all boards within the Department.
- A new fee of \$500 is proposed for reinstatement of a license that has been revoked or suspended following disciplinary action. This fee is based on the cost of the review of the background investigation and reinstatement application, and the cost of holding an informal conference to consider the reinstatement.
- A change is proposed for the payment instruction to clarify that some licensure processes are performed by a vendor, requiring payment of the fee to the vendor and not the Board, as set forth in the application instructions.

18 VAC 115-30-40. Certification, general.

Minor changes are proposed to conform the language in this section with that in 18 VAC 115-20-30.

18 VAC 115-30-110. Biennial renewal of certificate

Minor changes are proposed to indicate the new annual renewal period.

18 VAC 115-30-120. Reinstatement.

Amendments are proposed to change the current term for late renewal without reinstatement from four years to one year. Beyond the one year renewal period, a reinstatement procedure is proposed, requiring application for reinstatement and payment of a reinstatement fee. The reinstatement fee is established based on the administrative and review costs which are the same as that determined for initial licensure, plus a late renewal fee. This is in conformance with the *Principles for Fee Development* for all boards within the Department.

18 VAC 115-30-130. Legal name change.

The reference to the name change fee, which is being rescinded, is deleted from this section.

18 VAC 115-30-160. Reinstatement following disciplinary action.

A minor change is proposed to apply the same reinstatement procedure and fee to licenses that have been suspended, revoked or denied renewal.

Regulations Governing the Certification of Rehabilitation Providers

18 VAC 115-40-20. Fees required by the Board.

Fees are amended as follows:

- The proposal replaces the application processing fee with new initial certification by examination and initial certification by endorsement fees of \$90 to cover the costs of application processing and review (\$50 per application) plus an initial licensure fee composed of ½ the cost of the proposed renewal fee and a \$10 fee for a wall certificate.
- A renewal fee increase is proposed from the current \$50 annual renewal to a \$55 annual renewal. The proposed renewal fee reflects the cost of the administrative and disciplinary activities of the Board and the allocated costs of the Department.
- The cost for producing and sending a duplicate license has been reduced, so the proposed fee decreases from \$15 to \$5 and reflects the actual cost.
- An decrease in the late renewal fee from \$50 to \$20 is proposed to establish a fee that is 35% of the renewal fee in accordance with the agency's *Principles for Fee Development*.
- A new fee of \$100 is proposed for reinstatement of a certificate that has lapsed beyond one full renewal period. This fee is based on the cost of reviewing a reinstatement application, plus ½ of the annual renewal fee, plus the penalty fee for late renewal.
- The proposed fee of \$25 is estimated to be the actual administrative cost for processing and collecting on a returned check; it is proposed to be the same fee for all boards within the Department.
- A new fee of \$500 is proposed for reinstatement of a license that has been revoked or suspended following disciplinary action. This fee is based on the cost of the review of the background investigation and reinstatement application, and

the cost of holding an informal conference to consider the reinstatement.

- A change is proposed for the payment instruction to clarify that some fees are paid directly to the Board, and others (not included in the regulation) are established by and paid to the vendor.

18 VAC 115-40-34. Reinstatement.

Amendments are proposed to change the current term for late renewal without reinstatement from four years to one year. Beyond the one year renewal period, a reinstatement procedure is proposed, requiring application for reinstatement and payment of a reinstatement fee. The reinstatement fee is established based on the administrative and review costs which are the same as that determined for initial licensure, plus a late renewal fee. This is in conformance with the *Principles for Fee Development* for all boards within the Department.

18 VAC 115-40-60. Reinstatement following disciplinary action.

The Board proposes a new section to set forth a process and fee for reinstatement of a license which has been suspended or revoked to recover some of the costs for holding a hearing of the Board.

Regulations Governing the Practice of Marriage and Family Therapy

18 VAC 115-50-20. Fees required by the Board.

Fees are amended as follows:

- An increase in the fee for registration of supervision from \$20 to \$50 is proposed to cover the actual cost of reviewing a supervision contract and associated documentation.
- A new fee for adding or changing a supervisor is included to reflect the reduced cost of reviewing a second supervision contract for an individual whose other registration materials have already been reviewed.
- The proposal replaces the application processing fee with new initial licensure by examination and initial licensure by endorsement fees of \$140 to cover the costs of application processing and review (\$75 per application) plus an initial licensure fee composed of ½ the cost of the proposed renewal fee and a \$10 fee for a wall certificate.
- A renewal fee increase is proposed from the current \$75 biennial renewal to a \$105 annual renewal. The proposed renewal fee reflects the cost of the

administrative and disciplinary activities of the Board and the allocated costs of the Department.

- An increase in the late renewal fee from \$10 to \$35 is proposed to establish a fee that is 35% of the renewal fee in accordance with the agency's *Principles for Fee Development*.
- A new fee of \$165 is proposed for reinstatement of a license that has lapsed beyond one full renewal period. This fee is based on the cost of reviewing a reinstatement application, plus ½ of the annual renewal fee, plus the penalty fee for late renewal.
- An increase in the cost for verification of licensure to another jurisdiction from \$10 to \$25 is proposed to cover the administrative costs of retrieving and copying a file from the microfilm archive, and the mailing costs of the file.
- The cost for producing and sending a duplicate license has been reduced, so the proposed fee decreases from \$15 to \$5 and reflects the actual cost.
- The proposed fee of \$25 is estimated to be the actual administrative costs for processing and collecting on a returned check; it is proposed to be the same fee for all boards within the Department.
- A new fee of \$500 is proposed for reinstatement of a license that has been revoked or suspended following disciplinary action. This fee is based on the cost of the review of the background investigation and reinstatement application, and the cost of holding an informal conference to consider the reinstatement.
- A change is proposed for the payment instruction to clarify that some licensure processes are performed by a vendor, requiring payment of the fee to the vendor and not the Board, as set forth in the application instructions.

18 VAC 115-50-30. Application for licensure by examination.

Minor changes are proposed to conform the language in this section with that in 18 VAC 115-50-20.

18 VAC 115-50-40. Application for licensure by endorsement.

Minor changes are proposed to conform the language in this section with that in 18 VAC 115-50-20.

18 VAC 115-50-90. Biennial renewal of licensure

Minor changes are proposed to indicate the new annual renewal period.

18 VAC 115-50-100. Late renewal; reinstatement.

Amendments are proposed to change the current term for late renewal without reinstatement from four years to one year. Beyond the one year renewal period, a reinstatement procedure is proposed, requiring application for reinstatement and payment of a reinstatement fee. The reinstatement fee is established based on the administrative and review costs which are the same as that determined for initial licensure, plus a late renewal fee. This is in conformance with the *Principles for Fee Development* for all boards within the Department.

18 VAC 115-50-130. Reinstatement following disciplinary action.

The Board proposes a new section to set forth a process and fee for reinstatement of a license which has been suspended or revoked to recover some of the costs for holding a hearing of the Board.

Regulations Governing the Licensure of Substance Abuse Treatment Practitioners²

18 VAC 115-60-20. Fees required by the Board.

This is a new regulation which is not yet in effect. Proposed fees are amended as follows:

- A decrease in the fee for review of a new or additional supervision contract is proposed to reflect the diminished cost of reviewing a contract for an individual who has previously submitted documentation to the Board.
- The proposal establishes new initial licensure by examination and initial licensure by endorsement fees of \$140 to cover cost of review of application materials (\$75), the licensure fee for ½ of a renewal period, which is the average initial licensure period for new licensees, and a \$10 fee for a wall certificate.
- A renewal fee increase is proposed from a \$90 annual renewal to a \$105 annual renewal. The proposed renewal fee reflects the cost of the administrative and disciplinary activities of the Board and the allocated costs of the Department.
- The cost for producing and sending a duplicate license has been reduced, so the proposed fee decreases from \$15 to \$5 and reflects the actual cost.

² This regulation is not yet in effect. It was submitted to the Department of Planning and Budget and the Secretary of Health and Human Resources on January 5, 1999. The Board has not yet been granted permission to publish the proposed regulation.

- An increase in the cost for verification of licensure to another jurisdiction from \$10 to \$25 is proposed to cover the administrative costs of retrieving and copying a file from the microfilm archive, and the mailing costs of the file.
- An increase in the late renewal fee from \$25 to \$35 is proposed to establish a fee that is 35% of the renewal fee in accordance with the agency's *Principles for Fee Development*.
- A new fee is proposed for reinstatement of a license that has lapsed beyond one full renewal period. This fee is based on the cost of reviewing a reinstatement application, plus ½ of the annual renewal fee, plus the penalty fee for late renewal.
- The proposed fee of \$25 is estimated to be the actual administrative costs for processing and collecting on a returned check; it is proposed to be the same fee for all boards within the Department.
- A new fee of \$500 is proposed for reinstatement of a license that has been revoked or suspended following disciplinary action. This fee is based on the cost of the review of the background investigation and reinstatement application, and the cost of holding an informal conference to consider the reinstatement.
- A change is proposed for the payment instruction to clarify that some fees are paid directly to the Board, and others (not included in the regulation) are established by and paid to the vendor.

18 VAC 115-60-40. Application for licensure by examination

Minor changes are proposed to conform the language in this section with that in 18 VAC 115-60-20.

18 VAC 115-60-50. Application for licensure by endorsement.

Minor changes are proposed to conform the language in this section with that in 18 VAC 115-60-20.

18 VAC 115-60-120. Late renewal; reinstatement.

Amendments are proposed to change the current term for late renewal without reinstatement from four years to one year. Beyond the one year renewal period, a reinstatement procedure is proposed, requiring application for reinstatement and payment of a reinstatement fee. The reinstatement fee is established based on the administrative and review costs which are the same as that determined for initial licensure, plus a late renewal fee. This is in conformance with the *Principles for Fee Development* for all boards within the Department.

18 VAC 115-60-150. Reinstatement following disciplinary action.

A minor change is proposed to apply the same reinstatement procedure and fee to licenses that have been suspended, revoked or denied renewal.

4. Issues of the Regulations

An analysis of revenues and expenditures conducted at the end of the 1996-1998 biennium projected that under the current fee structure, the Board would face a 46% deficit at the end of the 1998-2000 biennium, an 84% deficit at the close of the 2000-2002 biennium, and a 123% deficit at the close of the 2000-2004 biennium. In order to remain in compliance with §54.1-113 of the Code of Virginia, the Board adopted a proposal for fee increases that will offset the projected deficit through 2004.

In developing the fee proposal, the agency's Finance Office used a new set of principles by which all boards are guided in the development of regulations. *The Principles for Fee Development* are intended to provide structure, consistency, and equity for all professionals regulated within the Department. In consideration of various alternatives and issues surrounding the adoption of fees, the *Principles* served to guide the Board in the development of appropriate and necessary fees.

ISSUE 1. Uniformity in renewal and application fees across professions.

As is stated in the *Principles*, renewal fees for all occupations regulated by a board should be consistent across occupations unless there is clear evidence to indicate otherwise. Professional counselors, marriage and family therapists and substance abuse treatment practitioners³ are all licensed for the independent delivery of mental health services. As a result, the relative numbers and kinds of disciplinary problems encountered by these professions is similar, and the cost of administering the disciplinary programs is also similar. Therefore, the Board is proposing the same renewal fee for all three licensure categories. Likewise, the education and experience requirements for the three licensure categories are similar, resulting in a comparable amount of work to process and review applications. The Board is proposing that \$75 of the initial licensure fee be attributed to credentials review for marriage and family therapist and substance abuse treatment practitioner applicants, based on the cost of staff time, reviewer time, mailing and copying costs, data processing and telephone costs for each applicant. Likewise, the board is proposing a \$50 review fee for initial registrations of supervision and a \$25 fee for subsequent registrations for marriage and family therapy applicants, and the same fee for the new licensure category of substance abuse treatment practitioner. Because application and registration of supervision reviews of professional counselor applicants are performed by a vendor, with fees established in contract and paid to the vendor, no review fees are attributed to the initial licensure fee for these applicants.

³ This regulation is not yet in effect. It was submitted to the Department of Planning and Budget and the Secretary of Health and Human Resources on January 5, 1999. The Board has not yet been granted permission to publish the proposed regulation.

The same reasoning was applied to the two certification categories. Because certified substance abuse counselors practice under structured settings and do not provide independent services, relatively few disciplinary problems arise compared with the licensure categories. Similarly, few complaints are received regarding certified rehabilitation providers because their work does not involve the risk of boundary violations characteristic of the counseling professions. Therefore, the Board proposing the same renewal fee for certified substance abuse counselors and certified rehabilitation providers, established at ½ of the amount proposed for the three independent licensure categories. Also, the credentials review time for the two certification categories is similar, but less than that for the three licensure categories. The Board is proposing that \$50 of the initial licensure fee be attributed to credentials review for rehabilitation provider applicants, based on the cost of staff time, reviewer time, mailing and copying costs, data processing and telephone costs for each applicant. Because application reviews of substance abuse counselor applicants are performed by a vendor, with a fee established in contract and paid to the vendor, no credentials review fee is attributed to the initial licensure fee for these applicants.

Advantages and disadvantages to the licensees

All individuals licensed or certified by the Board of Licensed Professional Counselors, Marriage and Family Therapists and Substance Abuse Professionals will experience increased renewal fees under the proposed regulations. In 1997, the Board reduced its renewal fees from \$85 annually to \$75 biennially for professional counselor licensure, and from \$40 annually to \$40 biennially for substance abuse counselor certification in response to a projected revenue surplus. Because of significant drops in renewals for certified rehabilitation providers and in applications for marriage and family therapist licensure, the budget projections now require that the fees be returned to approximately the pre-1997 levels. 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 specially funded agency, renewal fees pay the vast majority of the expenses of Board operations, which include investigation of complaints against licensees and certificate holders, adjudication of disciplinary cases, verification of licensure and education to other jurisdictions and entities, and communications with licensees and certificate holders about current practice and regulation.

ISSUE 2: Establishment of initial licensure fees.

For all professions governed by the Board, the initial licensure fee has historically been considered part of the application fee. This allowed for immediate processing of the license following notification of a passing exam score for an applicant. However, the fee was not developed according to any set formula consistent among boards in the agency. Additionally, recent outsourcing of some credentials review services (for professional counselor licensure and substance abuse counselor certification) to vendors resulted in initial licensure of individuals with no monies collected by the Board to cover the portion of the renewal period remaining. Under the new *Principles for Fee Development*, the

initial application fees should include the cost of credentials review, an appropriate portion of the license fees, and cost of the wall certificate.

For those professions that are not reviewed by the Board, the credentials review fee is established in the contract and paid to the vendor, and is therefore not included in the proposed regulations.

One method of assessing an initial licensure fee is prorating the fee based on the amount of time remaining in the renewal period. The Board is not proposing prorated fees because other boards in the agency have determined that the additional steps involved (assessing fee, notifying applicant, processing check, notifying applicant again check is not mailed until the next fee period begins, etc.) result in delays in licensure processing and can create more burden and lost income for the applicant than any benefit from the prorated fees. In the proposed regulations, all applicants for all categories of licensure and certification will be assessed a fee cover ½ of the renewal period, which is the average initial licensure period.

Advantages and disadvantages to the licensees

As is stated above, the advantage of not prorating fees is that initial licensure can occur in a more timely manner. For those who are applying for licensure by examination, the license is issued as soon as examination results are forwarded to the Board, usually within one or two working days. For those applying for licensure by endorsement, a license is typically issued within one or two days of receipt of all verifying documentation.

ISSUE 3. Establishment of application and initial licensure fee for licensure by examination versus licensure by endorsement.

Currently, the Board's regulations provide for licensure without examination (endorsement) for marriage and family therapists, substance abuse counselors and rehabilitation providers who are licensed or certified in other jurisdictions. The Board has proposed endorsement provisions for professional counselor licensure and for substance abuse treatment practitioners, a new licensure category⁴. However, the regulations do not distinguish the method of application in the application fee. The proposed regulations include fees for application and licensure by examination and by endorsement. These fees are identical in each regulation, because the estimated time spent in processing and reviewing applications for examination or endorsement is the same, whether the review is conducted by the Board or the vendor. However, by separating the fees, any future administrative changes that may alter the way the applications are reviewed can be reflected in the fees. For all professions, examinations fees are paid directly to the examination services, and are not included as part of the initial licensure fee.

⁴ This regulation is not yet in effect. It was submitted to the Department of Planning and Budget and the Secretary of Health and Human Resources on January 5, 1999. The Board has not yet been granted permission to publish the proposed regulation.

Advantages and disadvantages to the licensees

Setting the fees out separately will prevent confusion for applicants who may be expecting an additional cost for endorsement review. Since the review process will be the same, (vendors will make recommendations to the Board regarding endorsement applicants), there is no need for a difference in the fees. However, should the review process change for any reason, the regulations will be formatted to accommodate any differences. There are no disadvantages.

ISSUE 4. Establishment of different fees for renewing an expired license versus reinstating a lapsed license.

Currently, the Board's regulations set forth various processes for renewing an expired license, allowing up to four or five years to renew with back fees and penalty fees of \$10 per renewal period, and requiring either reapplication or evidence of continued competency beyond the four or five year period. In conformance with the *Principles for Fee Development*, the Board is proposing a penalty fee assessed at 35% of the renewal fee for licenses which have lapsed one renewal period, and a reinstatement application requirement for individuals whose licenses have lapsed beyond one renewal period. Since a reinstatement application is required for a licensee to reinstate a lapsed license, the proposed reinstatement fee includes the current renewal fee, the late fee, and a credential review fee.

Advantages and disadvantages to the licensees

For all categories of licensure and certification, the penalty fee for late renewal within the first renewal period will increase, which is a disadvantage to licensees. However, the proposal presents an advantage for individuals whose licenses have lapsed more than one renewal period.

Under the proposed regulations for substance abuse treatment practitioners,⁵ and the current regulations for rehabilitation providers, professional counselors and marriage and family therapists, individuals who have lapsed more than two renewal cycles must reapply according to the current regulations. If the requirements for licensure or certification change significantly, an individual returning to Virginia after a lengthy absence may find that he is no longer eligible for the category of licensure or certification he once held. The proposed change will allow the Board to use discretion as to whether an individual has maintained competency to perform the functions within the scope of practice of the license. For individuals who hold multiple licenses, the proposal establishes a consistent policy for each license held.

⁵ This regulation is not yet in effect. It was submitted to the Department of Planning and Budget and the Secretary of Health and Human Resources on January 5, 1999. The Board has not yet been granted permission to publish the proposed regulation

Under the current regulations for substance abuse counselor certification, individuals who have lapsed more than two renewal cycles must pay all back fees and penalty fees to be reinstated. This can result in exorbitant fees for individuals who have been absent from Virginia for many years. The proposal establishes a flat fee for reinstatement that will not increase based on years of absence.

ISSUE 5. Reinstatement after revocation

Reinstatement of a license which has been suspended or revoked necessitates an additional cost of a hearing before a panel of the Board. The estimated cost of a hearing, including Board member per diems, staff time and associated expenses is approximately \$500. The Board is proposing that individuals whose licenses have been suspended or revoked incur the cost of the reinstatement hearing.

ISSUE 6. Uniformity among boards for setting miscellaneous fees.

In setting proposed fees for miscellaneous activities of the Board, the *Principles* call for uniformity among boards and regulated entities. The Board is proposing fees for replacement of a duplicate license, duplicate certificate, and processing and collecting on a bad check based on cost estimates provided by the Deputy Director for Finance of the Department that will be standardized among all boards in the agency.

Advantages and disadvantages to the licensees

The advantage of proposed regulations is that all persons licensed or certified by a board under the Department of Health Professions will consistently pay a fee for miscellaneous activities determined by actual costs for that activity. There will not be inconsistent fees for licensees regulated under different boards.

Advantage or disadvantages to the public

Fee increases proposed by the Board should have no disadvantage to the consuming public. Although the increase in renewal fees for licensed professional counselors and substance abuse counselors is significant, it represents a return to the fees prior to the fee decrease in 1997. At the time the marriage and family therapist regulations became effective, fees were established as equivalent to the fees for professional counselors based on the similarity of the application process and estimated disciplinary activities equivalency to professional counselor licensure. Fees established in proposed regulations for substance abuse treatment practitioner licensure were based on projections from the Agency's Finance Office in November, 1998 for the fee structure that would have to be implemented for all licensure categories to offset the upcoming deficit.⁶ The Board is now proposing increases in fees for marriage and family therapist licensure and proposed fees for substance abuse treatment practitioner licensure based on the

⁶ This regulation is not yet in effect. It was submitted to the Department of Planning and Budget and the Secretary of Health and Human Resources on January 5, 1999. The Board has not yet been granted permission to publish the proposed regulation

equivalency to the professional counselor license in terms of costs to administer the licensure programs. Renewal fees for certified rehabilitation providers fees are increasing only slightly, from \$50 to \$55 per year.

There would be considerable disadvantages to the public if the Board took no action to address its deficit and increase fees to cover its 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 education programs. Potentially, the most serious consequence would be a reduction in or reprioritization of the investigation of complaints against regulated individuals. In addition, there may be delays in adjudicating cases of violations of the standards of practice, resulting in potential danger to clients who are often emotionally vulnerable to unscrupulous practitioners..

5. Estimated Fiscal Impact of the Regulations

I. Fiscal Impact Prepared by the Agency:

Number of entities affected by this regulation:

The number of regulated entities (as of June 7, 1999) who would be affected by these regulations is:

| | |
|---|------|
| Licensed Professional Counselors | 2293 |
| Certified Substance Abuse Counselors | 1124 |
| Certified Rehabilitation Providers | 1035 |
| Licensed Marriage and Family Therapists | 916 |
| Licensed Substance Abuse Treatment Practitioners ⁷ | |

Projected cost to the agency:

The agency will incur some costs (approximately \$1000) for mailings to the Public Participation Guidelines Mailing List, 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 costs to the affected entities:

For most applicants and regulated entities, the costs of acquiring and maintaining licensure will increase. The fee for the initial registration of supervision for marriage and family therapist licensure will increase from \$20 to \$50. Subsequent registrations remain the same. The increased cost for application review, and the assessment of initial licensure and wall certificate

⁷ This regulation is not yet in effect. It was submitted to the Department of Planning and Budget and the Secretary of Health and Human Resources on January 5, 1999. The Board has not yet been granted permission to publish the proposed regulation. Approximately 750 individuals are anticipated to apply for this license within the first year of the regulations becoming effective.

fees will increase the cost of initial licensure from \$85 and \$50 for professional counselors (fee paid to vendor) and marriage and family therapists, respectively, to \$150 and \$140. The fees for initial certification for substance abuse counselors will increase from \$45 (paid to a vendor) to \$95. The fee for initial certification for rehabilitation providers will decrease from \$100 to \$90. Because proposed regulations for substance abuse treatment practitioner licensure are not yet in effect, the original proposal will have to be amended to reflect these changes.

Professional counselors and marriage and family therapists will pay an additional \$ 67.50 per year to maintain their licenses.. Certified substance abuse counselors will pay an additional \$35 per year, and certified rehabilitation providers will pay an additional \$5.00 per year.

For professional counselors and marriage and family therapists who submit their renewal fee late within one renewal period, the late renewal penalty will increase from \$10 to \$35. For certified rehabilitation provider and certified substance abuse counselors, the late renewal penalty will increase from \$10 to \$20. The proposed reinstatement fees for marriage and family therapists and professional counselors whose licenses have lapsed beyond one renewal period, the fee for reinstatement will increase above the simple cost of reapplication by the cost of the penalty fee minus the cost of the wall certificate, which is \$25. Reinstatement for rehabilitation providers will increase by the same formula, which comes to \$10. For certified substance abuse counselors, reinstatement could represent a savings, depending on how many years the license has lapsed.

Miscellaneous costs, such as replacement of a duplicate license or wall certificate, verification of a license or transcript, and returned check charges are uniformly proposed at amounts consistent with the actual costs incurred by the Department for those activities.

Citizen input in development of regulation:

The Notice of Intended Regulatory Action was published on April 12, 1999 and subsequently sent to approximately 750 persons and organizations on the Public Participation Guidelines Mailing List of the Board. The deadline for comment was May 12, 1999 and there was no comment received.

In addition, the two citizen members of the Board participated in the discussions about fees and concurred with the fee proposal adopted by the Board.

Localities affected:

There are no localities in the Commonwealth affected by these amended regulations.

II. Fiscal Impact Prepared by the Department of Planning and Budget: (To be attached)

III. Agency Response:

c. Source of the legal authority to promulgate the contemplated regulation.

All regulations of the Board are were promulgated under the general authority of Title 54.1 of the Code of Virginia.

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 proposed 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.*

d. Letter of assurance from the office of the Attorney General.

See attached.

e. Summary of Public Comment received in response to the Notice of Intended Regulatory Action.

The Notice of Intended Regulatory Action was published on April 12, 1999 and subsequently sent to the Public Participation Guidelines Mailing List of the Board. The deadline for comment was May 12, 1999 and there was no comment received.

f. Changes to existing regulations.

Regulations Governing the Practice of Professional Counseling

18 VAC 115-20-20. Fees required by the Board.

Fees are amended as follows:

- A renewal fee increase is proposed from the current \$75 biennial renewal to a \$105 annual renewal. The proposed renewal fee reflects the cost of the administrative and disciplinary activities of the Board and the allocated costs of the Department.
- The proposal establishes new initial licensure by examination and initial licensure by endorsement fees of \$65 to cover the licensure fee for ½ of a renewal period, which is the average initial licensure period for new licensees, and a \$10 fee for a wall certificate.
- The cost for producing and sending a duplicate license has been reduced, so the proposed fee decreases from \$15 to \$5 and reflects the actual cost.
- An increase in the cost for verification of licensure to another jurisdiction from \$10 to \$25 is proposed to cover the administrative costs of retrieving and copying a file from the microfilm archive, and the mailing costs of the file.
- An increase in the late renewal fee from \$10 to \$35 is proposed to establish a fee that is 35% of the renewal fee in accordance with the agency's *Principles for Fee Development*.
- A new fee of \$165 is proposed for reinstatement of a license that has lapsed beyond one full renewal period. This fee is based on the cost of Board review of the reinstatement application plus ½ of the annual renewal fee to cover the average time remaining in a renewal period, plus the penalty fee for late renewal.

- The proposed returned check fee of \$25 is estimated to be the actual administrative costs for processing and collecting on a returned check; it is proposed to be the same fee for all boards within the Department.
- A new fee of \$500 is proposed for reinstatement of a license that has been revoked or suspended following disciplinary action. This fee is based on the cost of the review of the background investigation and reinstatement application, and the cost of holding an informal conference to consider the reinstatement.
- A change is proposed for the payment instruction to clarify that some licensure processes are performed by a vendor, requiring payment of the fee to the vendor and not the Board, as set forth in the application instructions.

18 VAC 115-20-40. General requirements.

Minor changes are proposed to conform the language in this section with that in 18 VAC 115-20-20.

18 VAC 115-20-100. Biennial renewal of licensure

Minor changes are proposed to indicate the new annual renewal period.

18 VAC 115-20-110. Late renewal; reinstatement.

Amendments are proposed to change the current term for late renewal without reinstatement from four years to one year. Beyond the one year renewal period, a reinstatement procedure is proposed, requiring application for reinstatement and payment of a reinstatement fee. The reinstatement fee is established based on the administrative and review costs which are the same as that determined for initial licensure, plus a late renewal fee. This is in conformance with the *Principles for Fee Development* for all boards within the Department.

18 VAC 115-20-150. Reinstatement following disciplinary action.

A minor change is proposed to apply the same reinstatement procedure and fee to licenses that have been suspended, revoked or denied renewal.

Regulations Governing the Certification of Substance Abuse Counselors

18 VAC 115-30-20. Fees required by the Board.

Fees are amended as follows:

- A renewal fee increase is proposed from the current \$40 biennial renewal to a \$55 annual renewal. The proposed renewal fee reflects the cost of the administrative and disciplinary activities of the Board and the allocated costs of the Department.
- The proposal establishes new initial licensure by examination and initial licensure by endorsement fees of \$40 to cover the licensure fee for ½ of a renewal period, which is the average initial licensure period for new licensees, and a \$10 fee for a wall certificate.
- The cost for producing and sending a duplicate license has been reduced, so the proposed fee decreases from \$15 to \$5 and reflects the actual cost.
- An increase in the late renewal fee from \$10 to \$20 is proposed to establish a fee that is 35% of the renewal fee in accordance with the agency's *Principles for Fee Development*.
- A new fee of \$100 is proposed for reinstatement of a certificate that has lapsed beyond one full renewal period. This fee is based on the cost of Board review of a reinstatement application (\$50), plus ½ of the annual renewal fee, plus the penalty fee for late renewal.
- The proposed returned check fee of \$25 is estimated to be the actual administrative cost for processing and collecting on a returned check; it is proposed to be the same fee for all boards within the Department.
- A new fee of \$500 is proposed for reinstatement of a license that has been revoked or suspended following disciplinary action. This fee is based on the cost of the review of the background investigation and reinstatement application, and the cost of holding an informal conference to consider the reinstatement.
- A change is proposed for the payment instruction to clarify that some licensure processes are performed by a vendor, requiring payment of the fee to the vendor and not the Board, as set forth in the application instructions.

18 VAC 115-30-40. Certification, general.

Minor changes are proposed to conform the language in this section with that in 18 VAC 115-20-30.

18 VAC 115-30-110. Biennial renewal of certificate

Minor changes are proposed to indicate the new annual renewal period.

18 VAC 115-30-120. Reinstatement.

Amendments are proposed to change the current term for late renewal without reinstatement from four years to one year. Beyond the one year renewal period, a reinstatement procedure is proposed, requiring application for reinstatement and payment of a reinstatement fee. The reinstatement fee is established based on the administrative and review costs which are the same as that determined for initial licensure, plus a late renewal fee. This is in conformance with the *Principles for Fee Development* for all boards within the Department.

18 VAC 115-30-130. Legal name change.

The reference to the name change fee, which is being rescinded, is deleted from this section.

18 VAC 115-30-160. Reinstatement following disciplinary action.

A minor change is proposed to apply the same reinstatement procedure and fee to licenses that have been suspended, revoked or denied renewal.

Regulations Governing the Certification of Rehabilitation Providers

18 VAC 115-40-20. Fees required by the Board.

Fees are amended as follows:

- The proposal replaces the application processing fee with new initial certification by examination and initial certification by endorsement fees of \$90 to cover the costs of application processing and review (\$50 per application) plus an initial licensure fee composed of ½ the cost of the proposed renewal fee and a \$10 fee for a wall certificate.
- A renewal fee increase is proposed from the current \$50 annual renewal to a \$55 annual renewal. The proposed renewal fee reflects the cost of the administrative and disciplinary activities of the Board and the allocated costs of the Department.
- The cost for producing and sending a duplicate license has been reduced, so the proposed fee decreases from \$15 to \$5 and reflects the actual cost.
- An decrease in the late renewal fee from \$50 to \$20 is proposed to establish a fee that is 35% of the renewal fee in accordance with the agency's *Principles for Fee Development*.
- A new fee of \$100 is proposed for reinstatement of a certificate that has lapsed beyond one full renewal period. This fee is based on the cost of reviewing a reinstatement application, plus ½ of the annual renewal fee, plus the penalty fee for late renewal.

- The proposed fee of \$25 is estimated to be the actual administrative cost for processing and collecting on a returned check; it is proposed to be the same fee for all boards within the Department.
- A new fee of \$500 is proposed for reinstatement of a license that has been revoked or suspended following disciplinary action. This fee is based on the cost of the review of the background investigation and reinstatement application, and the cost of holding an informal conference to consider the reinstatement.
- A change is proposed for the payment instruction to clarify that some fees are paid directly to the Board, and others (not included in the regulation) are established by and paid to the vendor.

18 VAC 115-40-34. Reinstatement.

Amendments are proposed to change the current term for late renewal without reinstatement from four years to one year. Beyond the one year renewal period, a reinstatement procedure is proposed, requiring application for reinstatement and payment of a reinstatement fee. The reinstatement fee is established based on the administrative and review costs which are the same as that determined for initial licensure, plus a late renewal fee. This is in conformance with the *Principles for Fee Development* for all boards within the Department.

18 VAC 115-40-60. Reinstatement following disciplinary action.

The Board proposes a new section to set forth a process and fee for reinstatement of a license which has been suspended or revoked to recover some of the costs for holding a hearing of the Board.

Regulations Governing the Practice of Marriage and Family Therapy

18 VAC 115-50-20. Fees required by the Board.

Fees are amended as follows:

- An increase in the fee for registration of supervision from \$20 to \$50 is proposed to cover the actual cost of reviewing a supervision contract and associated documentation.
- A new fee for adding or changing a supervisor is included to reflect the reduced cost of reviewing a second supervision contract for an individual whose other registration materials have already been reviewed.

- The proposal replaces the application processing fee with new initial licensure by examination and initial licensure by endorsement fees of \$140 to cover the costs of application processing and review (\$75 per application) plus an initial licensure fee composed of ½ the cost of the proposed renewal fee and a \$10 fee for a wall certificate.
- A renewal fee increase is proposed from the current \$75 biennial renewal to a \$105 annual renewal. The proposed renewal fee reflects the cost of the administrative and disciplinary activities of the Board and the allocated costs of the Department.
- An increase in the late renewal fee from \$10 to \$35 is proposed to establish a fee that is 35% of the renewal fee in accordance with the agency's *Principles for Fee Development*.
- A new fee of \$165 is proposed for reinstatement of a license that has lapsed beyond one full renewal period. This fee is based on the cost of reviewing a reinstatement application, plus ½ of the annual renewal fee, plus the penalty fee for late renewal.
- An increase in the cost for verification of licensure to another jurisdiction from \$10 to \$25 is proposed to cover the administrative costs of retrieving and copying a file from the microfilm archive, and the mailing costs of the file.
- The cost for producing and sending a duplicate license has been reduced, so the proposed fee decreases from \$15 to \$5 and reflects the actual cost.
- The proposed fee of \$25 is estimated to be the actual administrative costs for processing and collecting on a returned check; it is proposed to be the same fee for all boards within the Department.
- A new fee of \$500 is proposed for reinstatement of a license that has been revoked or suspended following disciplinary action. This fee is based on the cost of the review of the background investigation and reinstatement application, and the cost of holding an informal conference to consider the reinstatement.
- A change is proposed for the payment instruction to clarify that some licensure processes are performed by a vendor, requiring payment of the fee to the vendor and not the Board, as set forth in the application instructions.

18 VAC 115-50-30. Application for licensure by examination.

Minor changes are proposed to conform the language in this section with that in 18 VAC 115-50-20.

18 VAC 115-50-40. Application for licensure by endorsement.

Minor changes are proposed to conform the language in this section with that in 18 VAC 115-50-20.

18 VAC 115-50-90. Biennial renewal of licensure

Minor changes are proposed to indicate the new annual renewal period.

18 VAC 115-50-100. Late renewal; reinstatement.

Amendments are proposed to change the current term for late renewal without reinstatement from four years to one year. Beyond the one year renewal period, a reinstatement procedure is proposed, requiring application for reinstatement and payment of a reinstatement fee. The reinstatement fee is established based on the administrative and review costs which are the same as that determined for initial licensure, plus a late renewal fee. This is in conformance with the *Principles for Fee Development* for all boards within the Department.

18 VAC 115-50-130. Reinstatement following disciplinary action.

The Board proposes a new section to set forth a process and fee for reinstatement of a license which has been suspended or revoked to recover some of the costs for holding a hearing of the Board.

Regulations Governing the Licensure of Substance Abuse Treatment Practitioners⁸

18 VAC 115-60-20. Fees required by the Board.

This is a new regulation which is not yet in effect. Proposed fees are amended as follows:

- A decrease in the fee for review of a new or additional supervision contract is proposed to reflect the diminished cost of reviewing a contract for an individual who has previously submitted documentation to the Board.
- The proposal establishes new initial licensure by examination and initial licensure by endorsement fees of \$140 to cover cost of review of application materials (\$75), the licensure fee for ½ of a renewal period, which is the average initial licensure period for new licensees, and a \$10 fee for a wall certificate.

² This regulation is not yet in effect. It was submitted to the Department of Planning and Budget and the Secretary of Health and Human Resources on January 5, 1999. The Board has not yet been granted permission to publish the proposed regulation.

- A renewal fee increase is proposed from a \$90 annual renewal to a \$105 annual renewal. The proposed renewal fee reflects the cost of the administrative and disciplinary activities of the Board and the allocated costs of the Department.
- The cost for producing and sending a duplicate license has been reduced, so the proposed fee decreases from \$15 to \$5 and reflects the actual cost.
- An increase in the cost for verification of licensure to another jurisdiction from \$10 to \$25 is proposed to cover the administrative costs of retrieving and copying a file from the microfilm archive, and the mailing costs of the file.
- An increase in the late renewal fee from \$25 to \$35 is proposed to establish a fee that is 35% of the renewal fee in accordance with the agency's *Principles for Fee Development*.
- A new fee is proposed for reinstatement of a license that has lapsed beyond one full renewal period. This fee is based on the cost of reviewing a reinstatement application, plus ½ of the annual renewal fee, plus the penalty fee for late renewal.
- The proposed fee of \$25 is estimated to be the actual administrative costs for processing and collecting on a returned check; it is proposed to be the same fee for all boards within the Department.
- A new fee of \$500 is proposed for reinstatement of a license that has been revoked or suspended following disciplinary action. This fee is based on the cost of the review of the background investigation and reinstatement application, and the cost of holding an informal conference to consider the reinstatement.
- A change is proposed for the payment instruction to clarify that some fees are paid directly to the Board, and others (not included in the regulation) are established by and paid to the vendor.

18 VAC 115-60-40. Application for licensure by examination

Minor changes are proposed to conform the language in this section with that in 18 VAC 115-60-20.

18 VAC 115-60-50. Application for licensure by endorsement.

Minor changes are proposed to conform the language in this section with that in 18 VAC 115-60-20.

18 VAC 115-60-120. Late renewal; reinstatement.

Amendments are proposed to change the current term for late renewal without reinstatement from four years to one year. Beyond the one year renewal period, a reinstatement procedure is proposed, requiring application for reinstatement and payment of a reinstatement fee. The reinstatement fee is established based on the administrative

and review costs which are the same as that determined for initial licensure, plus a late renewal fee. This is in conformance with the *Principles for Fee Development* for all boards within the Department.

18 VAC 115-60-150. Reinstatement following disciplinary action.

A minor change is proposed to apply the same reinstatement procedure and fee to licenses that have been suspended, revoked or denied renewal.

g. Statement of reasoning for the regulations.

Need for Fee Increases

§ 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 1998-2000 biennium, the Board will incur a deficit of \$467,806 or 46% of its total budget for the all programs, and that the deficit will grow to 979,161 or 84% at the end of the 200-2002 biennium, and to 1,513,721 or 123% by the end of the 2002-2004 biennium. Since the fees from licensees no longer generate sufficient funds to pay operating expenses for the Board, a fee increase is essential.

Several factors have contributed to this projected deficit. At the end of the 1992-1994 biennium, the agency's Finance Office identified a 50% surplus in the Board's revenue, which resulted in action by the Board to reduce renewal fees. The Board reduced renewal fees from \$85 annually to \$75 biennially for professional counselor licensure, and from \$40 annually to \$40 biennially for substance abuse counselor certification. These reductions took effect in January, 1997, and were the lowest renewal fees for these credentials since 1982. During the 1996-1998 biennium, the Board's projected budget increased by 33 % due primarily to a doubling in the Board size and increased Board meeting activities for two new licensure programs, salary and fringe increases due to position reallocations, and increases in data processing costs. In addition, due to the increased number of occupations established under the Board, an increased proportion of staff time in the Behavioral Sciences Unit was being devoted to the Board, resulting in a shift of limited allocations for the Executive Director and Deputy Executive Director from 30% to 50%. Also, one staff member whose time was split evenly among three boards was shifted to 100% devoted to the Board of Licensed Professional Counselors, Marriage and Family Therapists and Substance Abuse Professionals. At the same time, the Board's revenue decreased primarily due to the decreased renewal fees and the loss of renewal fees from 1000 certified rehabilitation providers who declined to renew their certification after a statute change in 1997 made them ineligible for certification beyond July, 2000. Further reductions in revenue are projected in future biennia due to an unexpected lack of interest in the marriage and family therapist licensure category following the initial "grandfathering" year. The Board is also experiencing reductions in the numbers of applicants for substance abuse counselor certification, probably due to anticipation of the

upcoming licensure for substance abuse treatment practitioners which should be in effect by Spring, 2000.

Because of the increased expenditures and reduced revenues, the Board is now compelled to increase fees for professional counselor licensure and substance abuse certification to approximately the pre-1997 levels, and to increase application and renewal fees for all categories of licensure and certification according to the *Principles for Fee Development*. Because the current process for correcting deficits is slow, the Board is changing its biennial renewal cycle to annual renewal cycles for all professions to provide for faster adjustments in the budget.⁹ 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 specially funded agency, renewal fees pay the vast majority of the expenses of Board operations, which include investigation of complaints against licensees and certificate holders, adjudication of disciplinary cases, verification of licensure to other jurisdictions and entities, and communications with licensees and certificate holders about current practice and regulation.

The reasoning for the establishment of a reinstatement fee for individuals whose licenses have been suspended or revoked is that this expense is incurred at the discretion of an individual who has been found guilty of a serious offense, and would be unfair to have other licensees bear the expense.

h. Alternatives considered.

Prior to the publication of a Notice of Intended Regulatory Action to increase fees of the Board, the agency considered three possible solutions to the deficits:

- 1. General Fund Support.** 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.
- 2. Reduction in department/board operations and staff .** In order to prevent deficit spending, the department would basically need to lay off staff to reduce expenses associated with operations. This would result in delays in applicant processing and licensure renewals, and adjudication of disciplinary cases which would place the public at risk. It is believed that these consequences would not be acceptable to the administration, the General Assembly, or to the general public.
- 3. Increase fees through the promulgation of regulations.** An alternative is to seek the revenue from licensees and applicants to fully fund appropriated expenditures. Costs of services will be paid by clients who use the services of

⁹ Because biennial renewal fees were paid in June, 1999 for professional counselor, marriage and family therapist and substance abuse counselor renewals, the board will not realize any effects of the proposed fee increases until June, 2001.

providers, but licensure fees represent a miniscule percentage of the over-all costs of health care. However, failure to fully fund the services through fees will have a detrimental affect on quality.

It was the recommendation of the Department that the Board adopt the third alternative and seek to increase some of its fees.

Prior to consideration of amendments to regulations by the Board, the Department of Health Professions set forth a set of principles by which all boards would be guided in the development of regulations. The “Principles for Fee Development” are intended to provide structure, consistency, and equity for all professionals regulated within the Department. In consideration of various alternatives and issues surrounding the adoption of fees, the Principles served to guide the Board in the development of an appropriate and necessary fee.

During the development of a fee proposal, the Board considered the following issues and alternatives:

1. Uniformity in renewal and application fees across professions.

As is stated in the *Principles*, renewal fees for all occupations regulated by a board should be consistent across occupations unless there is clear evidence to indicate otherwise. Professional counselors, marriage and family therapists and substance abuse treatment practitioners¹⁰ are all licensed for the independent delivery of mental health services. As a result, the relative numbers and kinds of disciplinary problems encountered by these professions is similar, and the cost of administering the disciplinary programs is also similar. Therefore, the Board is proposing the same renewal fee for all three licensure categories. Likewise, the education and experience requirements for the three licensure categories are similar, resulting in a comparable amount of work to process and review applications. The Board is proposing that \$75 of the initial licensure fee be attributed to credentials review for marriage and family therapist and substance abuse treatment practitioner applicants, based on the cost of staff time, reviewer time, mailing and copying costs, data processing and telephone costs for each applicant. Using the same analysis, the board is proposing a \$50 review fee for initial registrations of supervision and a \$25 fee for subsequent registrations for these two professions. Because application and registration of supervision reviews of professional counselor applicants are performed by a vendor, with fees established in contract and paid to the vendor, no review fees are attributed to the initial licensure fee for these applicants.

The same reasoning was applied to the two certification categories. Because certified substance abuse counselors practice under structured settings and do not provide independent services, relatively few disciplinary problems arise compared with the

¹⁰ This regulation is not yet in effect. It was submitted to the Department of Planning and Budget and the Secretary of Health and Human Resources on January 5, 1999. The Board has not yet been granted permission to publish the proposed regulation.

licensure categories. Similarly, few complaints are received regarding certified rehabilitation providers because their work does not involve the risk of boundary violations characteristic of the counseling professions. Therefore, the Board proposing the same renewal fee for certified substance abuse counselors and certified rehabilitation providers, established at ½ of the amount proposed for the three independent licensure categories. Also, the credentials review time for the two certification categories is similar, but less than that for the three licensure categories. The Board is proposing a that \$50 of the initial licensure fee be attributed to credentials review for rehabilitation provider applicants, based on the cost of staff time, reviewer time, mailing and copying costs, data processing and telephone costs for each applicant. Because application reviews of substance abuse counselor applicants are performed by a vendor, with a fee established in contract and paid to the vendor, no credentials review fee is attributed to the initial licensure fee for these applicants.

2. Establishment of initial licensure fees.

For all professions governed by the Board, the initial licensure fee has historically been considered part of the application fee. This allowed for immediate processing of the license following notification of a passing exam score for an applicant. However, the fee was not developed according to any set formula consistent among boards in the agency. Additionally, recent outsourcing of some credentials review services (for professional counselor licensure and substance abuse counselor certification) to vendors resulted in initial licensure of individuals with no monies collected by the Board to cover the portion of the renewal period remaining. Under the new *Principles for Fee Development*, the initial application fees should include the cost of credentials review, an appropriate portion of the license fees, and cost of the wall certificate.

For those professions that are not reviewed by the Board, the credentials review fee is established in the contract and paid to the vendor, and is therefore not included in the proposed regulations.

One method of assessing an initial licensure fee is prorating the fee based on the amount of time remaining in the renewal period. The Board is not proposing prorated fees because other boards in the agency have determined that the additional steps involved (assessing fee, notifying applicant, processing check, notifying applicant again check is not mailed until the next fee period begins, etc.) and resulting delays in licensure processing can create more burden and lost income for the applicant than any benefit from the prorated fees. In the proposed regulations, all applicants for all categories of licensure and certification will be assessed a fee cover ½ of the renewal period, which is the average initial licensure period.

3. Establishment of application and initial licensure fee for licensure by examination versus licensure by endorsement.

Currently, the Board's regulations provide for licensure without examination (endorsement) for marriage and family therapists, substance abuse counselors and rehabilitation providers who are licensed or certified in other jurisdictions. The Board has proposed endorsement provisions for professional counselor licensure and for substance abuse treatment practitioners, a new licensure category. However, the regulations do not distinguish the method of application in the application fee. The proposed regulations include fees for application and licensure by examination and by endorsement. These fees are identical in each regulation, because the estimated time spent in processing and reviewing applications for examination or endorsement is the same, whether the review is conducted by the Board or the vendor. However, by separating the fees, any future administrative changes that may alter the way the applications are reviewed can be reflected in the fees. For all professions, examinations fees are paid directly to the examination services, and are not included as part of the initial licensure fee.

4. Establishment of different fees for renewing an expired license versus reinstating a lapsed license.

Currently, the Board's regulations set forth various processes for renewing an expired license, allowing up to four or five years to renew with back fees and penalty fees of \$10 per renewal period, and requiring either reapplication or evidence of continued competency beyond the four or five year period. In conformance with the *Principles for Fee Development*, the Board is proposing a penalty fee assessed at 35% of the renewal fee for licenses which have lapsed one renewal period, and a reinstatement application requirement for individuals whose licenses have lapsed beyond one renewal period. Since a reinstatement application is required for a licensee to reinstate a lapsed license, the proposed reinstatement fee includes the current renewal fee, the late fee, and a credential review fee.

5. Reinstatement after revocation

Reinstatement of a license which has been suspended or revoked necessitates an additional cost of a hearing before a panel of the Board. The estimated cost of a hearing, including Board member per diems, staff time and associated expenses is approximately \$500. The Board is proposing that individuals whose licenses have been suspended or revoked incur the cost of the reinstatement hearing.

6. Uniformity among boards for setting miscellaneous fees.

In setting proposed fees for miscellaneous activities of the Board, the Principles call for uniformity among boards and regulated entities. The Board is proposing fees for replacement of a duplicate license, duplicate certificate, and processing and collecting on a bad check based on cost estimates provided by the Deputy Director for Finance of the Department that will be standardized among all boards in the agency.

Adoption of fee proposal.

Prior to its adoption of proposed regulations, the Board discussed the “Principles for Fee Development” prepared by staff of the Department and reviewed the policies for applying those Principles to fees of the Board. It then considered two proposals prepared by the Finance Office of the Department, all of which follow the “Principles for Fee Development” but increase fees at differing rates.

Given its statutory responsibility to levy fees sufficient to meet expenses of the Board, Proposal #2 was adopted as the only one of the two options that would erase the deficit. Therefore, the Board unanimously adopted the fee structure reflected in proposal #2 and proposed the necessary amendments to its regulations.

i. Statement of clarity.

Prior to the adoption of proposed regulations by the Board, the Deputy Director of the Department of Health Professions along with other members of the staff developed a set of Principles by which boards would be guided in the development of fees mandated by the Code of Virginia. The purpose of the Principles was to provide guidance for clarity, reasonableness and consistency among boards and among professions regulated within a single board. The clarity and reasonableness of the language that was adopted had the approval of the licensees and citizen members of the Board and the Assistant Attorney General who worked with the Board on regulatory language.

j. Schedule for review of regulation.

The proposed amendments to these regulations will be reviewed following publication in the Register and the 60-day public comment period. If there are any oral or written comments received, the Board will consider revisions to the proposal prior to adoption of final regulations.

Public Participation Guidelines of the Board (18 VAC 115-10-10 et seq.) require a thorough review of regulations each biennium. In addition, § 54.1-113 of the Code of Virginia requires a review of the fee structure at the close of each biennium. Therefore, the Board will review this regulation in 2001-02 and will recommend amendments as necessary.

Any review which indicates that the Board is accumulating a surplus in funds in excess of 10% of revenue over budget would result in proposed regulations to reduce fees. That action could be expedited under an exemption from the Administrative Process Act (§ 9-6.14:4.1 of the Code of Virginia).

In addition, the Board receives public comment at each of its meetings and will consider any request for amendments. Petitions for rule-making also receive a response from the Board during the mandatory 180 days in accordance with its Public Participation Guidelines.

k. Anticipated Regulatory Impact

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 for necessary functions of education program approval, administration of licensing, investigation of complaints, and disciplinary hearings.

(ii) One-time versus ongoing expenditures:

The agency will incur some costs (approximately \$1000) for mailings to the Public Participation Guidelines Mailing List, conducting a public hearing, and sending copies of final regulations to regulated entities.

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 professional counselors, licensed marriage and family therapists, certified rehabilitation providers and certified substance abuse counselors in Virginia and persons who would be applying for licensure or certification.

Estimate of number of entities to be affected:

The number of regulated entities (as of June 7, 1999) who would be affected by amended renewal fees is:

| | |
|--|------|
| Licensed Professional Counselors | 2293 |
| Certified Substance Abuse Counselors | 1124 |
| Certified Rehabilitation Providers | 1035 |
| Licensed Marriage and Family Therapists | 916 |
| Licensed Substance Abuse Treatment Practitioners ¹¹ | |

The number of applicants for licensure or certification as professional counselors, marriage and family therapists, rehabilitation providers and substance abuse counselors who will pay an

¹¹ This regulation is not yet in effect. It was submitted to the Department of Planning and Budget and the Secretary of Health and Human Resources on January 5, 1999. The Board has not yet been granted permission to publish the proposed regulation. Approximately 750 applicants are expected to apply for this license within the first year of the effective date of the regulations.

additional fee is estimated to be 407 per year. The number who will register a supervisor with the Board is estimated to be 90, with another 50 adding or changing a supervisor.

The number of individuals who will be affected by an increased late renewal penalty from \$10 to \$20 or to \$35 is estimated to be 15 per year. The number of certified rehabilitation providers who will benefit from a reduction in the late fee from \$50 to \$20 is estimated to be 75 per year. The number who will request reinstatement of a lapsed license is estimated to be 32; approximately one or two individuals each year will pay an additional \$500 to reinstate a suspended or revoked license.

Approximately 29 individuals each year who request a duplicate license will have a reduction from \$15 to \$5 in the fee the Board charges. It is also estimated that 25 professional counselors and marriage and family therapists will have an increase in the fee from \$10 to \$25 for verifying their Virginia licensure to other jurisdictions or entities.