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Regulatory
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Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Board of Medicine, Department of Health Professions
Virginia Administrative Code (VAC) citation	18VAC85-20-10 et seq., 18VAC85-40-10 et seq., 18VAC85-50-10 et seq., 18VAC85-80-10 et seq., 18VAC85-101-10 et seq., 18VAC85-110-10 et seq., 18VAC85-120-10 et seq.
Regulation title	Regulations Governing the Practice of Medicine, Osteopathic Medicine, Podiatry and Chiropractic Regulations Governing the Practice of Respiratory Care Practitioners Regulations Governing the Practice of Physician Assistants Regulations Governing the Practice of Occupational Therapy Regulations Governing the Practice of Radiologic Technology Regulations Governing the Practice of Licensed Acupuncturists Regulations Governing the Licensure of Athletic Trainers
Action title	Fee increase
Document preparation date	7/28/05

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

The issue to be addressed is the need of the Board of Medicine to increase fees to cover expenses for essential functions of the licensing practitioners, investigation of complaints against licensees, and adjudication of disciplinary cases required for public safety and security in the Commonwealth.

For the 2002-04 biennium, the Board had \$11,109,381 in revenue and \$10,959,273 in expenditures. With a carry-over from the previous biennium of \$1,908,033, it concluded the biennium with a surplus of \$2,058,141. With a fee increase that took effect in July of 2004, the Board anticipates that its revenue for the 2004-06 biennium will be \$12,957,572, but expenditures will be \$13,547,736. Included in the expenditure figure is \$560,000 that is

transferred from the budget of the Board to the Department of Health each year to support scholarships for physicians who intend to practice in underserved areas. Prior to the 2003 budget, that amount was a general fund appropriation under VDH.

With \$583,434 of the Controlled Substance Registration fund allocated to the budget of the Board of Medicine and with a cash surplus from the previous biennium, the projected cash surplus on June 30, 2006 is estimated to be \$2,051,411. However, current projections indicate that expenditures for the FY07-FY08 biennium will exceed revenue by approximately \$2,657,878, and the Board will have a deficit of \$606,467 by June 30, 2008. It is projected that the deficit could grow to \$4,081,884 by June 30, 2010. Therefore, it is essential that the Board begin the process of increasing its fees prior to the 2007 renewal cycle.

§ 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. 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. In order to have sufficient funding for the operation of the Board by fiscal year 2008, it is necessary to begin the promulgation of amendments to regulations.

No preliminary regulatory language has been developed; the agency will develop alternative fee structures that will address the deficit in funding for the Board to consider in its adoption of proposed regulations. Expenditures related to various functions of the Board will be examined to determine if fees directly related to those activities are sufficient to cover the expenses.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

Regulations under 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 that 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.

Substance

Please detail any changes that will be proposed. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed. Include the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. Delineate any potential issues that may need to be addressed as the regulation is developed.

Need for Fee Increases

While the Board is projected to underspend its direct and allocated budget for FY05, its revenue for this fiscal year has not equaled total expenditures. Increases in expenditures are primarily related to increased costs for enforcement. Both the number and complexity of disciplinary cases have grown in the past few years, with allocated costs for investigations and compliance escalating from \$864,588 in FY02 to a projected \$1,612,305 in FY05. Direct and allocated costs are also related to increased need for funds for staff pay and related benefit increases over the past few years, especially in health insurance, and for the general costs of doing business, such as operation of the DHP data system under VITA.

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 applicants and protecting the public from continued practice by incompetent or unethical practitioners.

Comparison of fees in other states

Comparative data on Medicine fees in other states would indicate that fees in Virginia are generally higher for renewals and applications for doctors of medicine and surgery as compared with neighboring states. A comparison of fees for MD’s and some of the other professions related by the Board in neighboring states is as follows:

State	Fees for MD	Sample Fees for other professions under Medicine
Virginia	Application - \$302	All allied professions: Application - \$130

	Biennial renewal - \$337	Biennial renewal - \$135
Maryland	Application - \$824 Biennial renewal - \$520	Respiratory care: Application - \$177 Biennial renewal - \$162
North Carolina	Application - \$250 Annual renewal - \$125	Physician assistant: Application - \$20 Annual renewal - \$120
Tennessee	Application - \$400 Biennial renewal - \$235	Respiratory care: Application - \$210 Biennial renewal - \$140
Kentucky	Application - \$250 Annual renewal - \$125	Physician Assistant: Application - \$100 Biennial renewal - \$100
West Virginia	Application - \$300 Biennial renewal - \$300	Physician Assistant: Application - \$100 Biennial renewal - \$50

However, there are **27 other states** that have a **higher renewal fee** than the current fee in Virginia, and the average application fee (without examination) is \$357, which is lower than the \$302 charged applicants in Virginia. Therefore, a modest fee increase for practitioners licensed under the Board should not have a detrimental effect on the workforce or have any impact on whether a person chooses to practice in Virginia.

Renewal Schedule

Doctors regulated under Chapter 20 renew their licenses biennially in even years; other professions also renew biennially in even or odd years. While this action will not be concluded in time for renewals in 2006, it is necessary to have fee regulations in place to begin collecting the increased application fee and have the higher renewal fee in effect prior to notices being sent for the 2007-08 renewal cycle.

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action.

In taking action to respond to deficits incurred by a regulatory board, the Board of Medicine may consider three options as follows:

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 health care. The cost of operation of regulatory boards does not significantly affect the cost or access to health care. However, failure to fully fund the licensing and disciplinary services through fees will have a detrimental affect on quality and availability of care.

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 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
- License renewals
- Regulation
- Inspections of medical offices as needed

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

Practitioners licensed under the Board of Medicine are now aware of the fund transfer from its fees to the Department of Health. If those funds were never taken from the budget of the Board, it is anticipated that there would be a \$400,000 surplus at the end of the 2009-2010 biennium, rather than the projected deficit of \$4,081,884. If the fund transfer was deleted in the budget adopted by the 2006 General Assembly, the projected deficit would be reduced from over \$4 million to approximately \$1.8 million by June 30, 2010, and the fee increase could be much smaller and possibly delayed to 2008.

Family impact

Assess the potential impact of the proposed regulatory action on the institution of the family and family stability.

There is no impact of the proposed regulatory action on the institution of the family and family stability.