REGISTRAR'S SUBMISSION PACKAGE

BOARD OF MEDICINE
18 VAC 85-40-10 et seq.

Analysis of Proposed Amendments to Regulation

1. Basis of Regulation:

Title 54.1, Chapter 24 and Chapter 29 of the Code of Virginia provide the basis for these regulations.

Chapter 24 establishes the general powers and duties of health regulatory boards including the power to establish qualifications for licensure and responsibility to promulgate regulations.

§§ 54.1-2954 through 54.1-2956.01 establishes the definition of a respiratory care practitioner and requirements for the licensure of this profession and specifies the powers and duties of the Advisory Board on Respiratory Care.

2. Statement of Purpose:

The purpose of the proposed amendments is to promulgate regulations for the licensure of respiratory care practitioners regulations pursuant to changes in the Code of Virginia made in Chapter 557 of the 1998 Acts of the Assembly. In accordance with the second enactment clause, the Board promulgated emergency regulations, which became effective on January 21, 1999. These proposed regulations replace the emergency regulations and are intended to establish those qualifications for licensure which are necessary to protect the public health and safety in the delivery of respiratory care services.

3. Substance of Regulations:

18 VAC 85-40-10. A definition of an "accredited educational program" was added in order to specify the accrediting body for respiratory care programs recognized by the Board as the Committee on Accreditation for Respiratory Care of the National Board for Respiratory Care (NBRC). A definition of "active practice" is added (not included in the emergency regulations) to specify that the active practice of respiratory care may include activities which are not direct patient care and which include 160 hours of practice within a 24-month period immediately preceding renewal or application for licensure from a person previously licensed or certified in another jurisdiction.

18 VAC 85-40-25. A new section was added to require licensees to furnish current name and address within 30 days of any change and to specify that notices mailed or served by the Board to the name and address on file shall be validly given.

18 VAC 85-40-40. Application requirements have been amended to state some of the current requirements that are found in other sections and to specify the documentation or verification necessary to become licensed as a respiratory care practitioner.

18 VAC 85-40-45. A new section is adopted to state the educational requirements as required by the statute. The requirements are those of the NBRC to sit for the entry level certification examination or to hold credentials as a CRTT or a RRT.

18 VAC 85-40-50. Amendments are editorial; current requirements for an applicant are restated in section 40.

18 VAC 85-40-60. An amendment to the requirements for renewal of license will provide for evidence of active practice which is defined in 18 VAC 85-40-10 as at least 160 hours of practice during the biennial renewal cycle, which is the minimal requirement for other licensed professions (such as occupational therapy or physical therapy) under the Board of Medicine.

18 VAC 85-40-65. The current regulations have no provision for reinstatement of an expired license regardless of length of expiration or lack of active practice. The new section will require the applicant for reinstatement of a license lapsed for more than two years to submit evidence of competency to practice – which may be active practice in another jurisdiction, continuing education or retraining in the profession. The proposed regulation also provides for reinstatement of a revoked license in accordance with provisions of § 54.1-2921 of the Code of Virginia.

18 VAC 85-40-80. The fee for late renewal of licensure was amended from $10 to $25 to be consistent with all other licensed professions under the Board of Medicine. Fees for reinstatement of a revoked license, for issuance of a duplicate license or a duplicate wall certificate were also added for consistency with other regulations and to recover costs incurred by the Board in the performance of these activities.

4. Issues of the Regulations

ISSUE 1: Qualifications for licensure as a respiratory care practitioner.

In the statutory definition of a "respiratory care practitioner", there is a requirement that the person shall have passed the national examination for entry level practice of respiratory care administered by the National Board for Respiratory Care, Inc. (NBRC), or other examination approved by the Board. Regulations for certification specified passage of that examination in order to hold the title of "respiratory therapist." The proposed regulations for licensure would also require that the applicant be a graduate of an accredited educational program or hold

current credentialing as a Certified Respiratory Therapy Technician (CRTT) or as a Registered Respiratory Therapist (RRT) from the NBRC. If a person has passed the entry-level examination for respiratory therapy practitioners, which is required for licensure in Virginia, he is allowed to use the credential of CRTT. If a person has earned the higher credential of RRT, it indicates that they have taken the Registry Examination for Advanced Respiratory Therapy Practitioners.

Currently, all candidates for the national examination must be graduates of an accredited respiratory therapy educational program to qualify for testing. However, some RRT's prior to 1970 and CRTT's prior to 1974 were not required to be graduates of accredited educational programs since schools did not exist in an organized manner before those dates. Training was given on the job, typically in a hospital setting. Therefore, the NBRC recommends the language that the Board has proposed to enable persons to become licensed who have held the credentials and been practicing for a number of years.

Advantage or disadvantages

There are no disadvantages to the public which is better protected by having respiratory care delivered by persons who have graduated from an accredited educational program or have met the criteria for certification as a CRTT or a RRT and have passed a national examination which tests the knowledge and abilities of those who will be licensed in Virginia.

The proposed regulation also offers several advantages to the respiratory care practitioners. By having nationally recognized standards, the Board enhances the ability of a practitioner licensed in Virginia to transfer to another jurisdiction and become licensed. The regulations also recognize the different pathways to national certification by the NBRC (as discussed in Issue 1) and impose no additional burden on applicants for licensure.

ISSUE 2: Evidence of continuing competency for renewal of licensure.

The Board of Medicine currently requires some evidence of continuing competency for licensed practitioners such as physical therapists (320 hours of active practice within the past four years), licensed acupuncturists (certification by NCCAOM requiring 100 hours of CME's in a two-year period), physician assistants (certification by NCCPA requiring 60 professional development activities in a four-year period) and occupational therapists (requirement for active practice during the renewal cycle). In addition, the Board is proposing specific hours of continued competency for physicians, chiropractors, podiatrists, occupational therapists and radiologic technologists.

Before July 1, 1998, respiratory care practitioners were certified by the Board of Medicine; no competency requirement was imposed for certification, which was title protection and therefore voluntary for practitioners. The Board considered what type of requirement would be reasonable and appropriate for respiratory care practitioners and would, at the same time, provide the needed assurance to the public that minimal competency had been maintained. Since there is no national credentialing body or standard within the profession for continuing

education or competency, the Board determined that evidence of 160 hours of active practice in the profession was the least burdensome regulation it could reasonably impose at this time. While it does not assure that the practitioner is learning new techniques and information, it does provide some assurance that he is remaining current in his professional knowledge and skills.

To accommodate persons whose respiratory care practice may now include educational, administrative, supervisory or consultative services rather than direct patient care, the Board added a definition of "active practice" to clarify that those professional activities were acceptable for the purpose of fulfilled the renewal requirements.

Advantages and disadvantages

There are no disadvantages to the public which is better protected by having a requirement for hours of active practice in order to renew an active license. Since most respiratory care practitioners work for an organization, which itself must be credentialed, there is also some continued oversight of their competency to practice.

A respiratory care practitioner who is maintaining an active license to practice should be required to work a minimal number of hours during the biennium in order to keep up with a rapidly changing, highly technical field. The requirement of 160 hours of practice with a two-year period is easily obtainable, even for persons who are working only on a part-time basis.

ISSUE 3: Requirements for reinstatement of an expired or revoked license.

The Board determined that it was also necessary to amend requirements for reinstatement of a license which had expired for two years or more or had been revoked. It has specified that the expired license may only be reinstated by payment of a reinstatement fee and submission of a reinstatement application which includes information on practice and licensure in other states during the period in which the license was lapsed in Virginia. A practitioner whose license has been revoked must submit a new application and meet requirements of § 54.1-2921.

Advantages and disadvantages

The proposed regulation protects the public by requiring that the applicant provide complete information on practice and licensure in other jurisdictions during that period. That provides the Board with an opportunity to check on the safety and disciplinary history of a licensee who may have been in practice elsewhere during the time the license was lapsed in Virginia. The Board also maintains its authority to deny reinstatement to anyone who has committed acts in violation of law or regulation.

ISSUE 4: Amendments to fees.

Fees were amended or added for consistency with other professions licensed by the Board. Therefore, the administrative fee for processing a late renewal by hand within the agency is

raised from $10 to $25; a fee of $500 for renewing a revoked license is added; and fees of $10 for a duplicate license and $25 for a duplicate wall certificate were added.

Advantages and disadvantages

There are no disadvantages of the amended fees to the public; they will not positively or negatively affect the delivery or quality of health care provided to the citizens of the Commonwealth.

Only a small number of practitioners will be affected by these changes in fees. There may be 25 to 35 persons who will pay the additional $15 for a late renewal of licensure. Less than 10 persons will request a duplicate license or certificate, and thus far, the Board has never revoked the license of a respiratory care practitioner.

5. Estimated Fiscal Impact of the Regulations

I. Fiscal Impact Prepared by the Agency:

Number of entities affected by this regulation:

There are 2,706 respiratory care practitioners licensed in Virginia.

Projected cost to the agency:

The agency will incur some costs (less than $1000) for mailings to the Public Participation Guidelines Mailing List, conducting a public hearing, and sending copies of final regulations to regulated entities. Since these regulations are being amended simultaneously with other regulations of the Board, the costs of mailings, meetings and hearings will be shared by several professions. In addition, every effort will be made to incorporate those into anticipated mailings and board meetings already scheduled.

Projected costs to the affected entities:

There would be no additional costs for compliance with these regulations for vast majority of respiratory care practitioners in the Commonwealth. There may be 25 to 35 persons who will pay the additional $15 for a late renewal of licensure. Less than 10 persons will request a duplicate license or certificate, and thus far, the Board has never revoked the license of a respiratory care practitioner.

Citizen input in development of regulation:

In the development of regulations, notices were sent to persons on the public participation guidelines mailing list of every meeting of the Advisory Board on Respiratory Care, the Legislative Committee of the Board, and of the Board itself. A Notice of Intended

Regulatory Action was also sent to persons on the list; no comment was received on the NOIRA. Public comment was also received at each meeting.

Localities affected:

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

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.

18 VAC 85-40-10 et seq. Regulations Governing the Practice of Respiratory Care Practitioners was 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, levy fees, administer a licensure and renewal program, and discipline regulated professionals.

§ 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.

In addition to provisions in § 54.1-2400 which authorizes the Board to set qualifications and standards for licensure, the Code provides a mandate for continuing competency and for licensure of respiratory care practitioners:

§ 54.1-2912.1. Continued competency requirements.

A. The Board shall prescribe by regulation such requirements as may be necessary to ensure continued practitioner competence which may include continuing education, testing, and/or any other requirement.
B. In promulgating such regulations, the Board shall consider (i) the need to promote ethical practice, (ii) an appropriate standard of care, (iii) patient safety, (iv) application of new medical technology, (v) appropriate communication with patients, and (vi) knowledge of the changing health care system.
C. The Board may approve persons who provide or accredit such programs in order to accomplish the purposes of this section.

§ 54.1-2954. Respiratory care practitioner; definition.

"Respiratory care practitioner" means a person who has passed the examination for the entry level practice of respiratory care administered by the National Board for Respiratory Care, Inc., or other examination approved by the Board, who has complied with the regulations pertaining to licensure prescribed by the Board, and who has been issued a license by the Board.

§ 54.1-2954.1. Powers of Board concerning respiratory care.

The Board shall take such actions as may be necessary to ensure the competence and integrity of any person who claims to be a respiratory care practitioner or who holds himself out to the public as a respiratory care practitioner or who engages in the practice of respiratory care and to that end the Board shall license persons as respiratory care practitioners. The provisions hereof shall not prevent or prohibit other persons licensed pursuant to this chapter from continuing to practice respiratory care when such practice is in accordance with regulations promulgated by the Board.

The Board shall establish requirements for the supervised, structured education of respiratory care practitioners, including preclinical, didactic and laboratory, and clinical activities, and an examination to evaluate competency. All such training programs shall be approved by the Board.

§ 54.1-2955. Restriction of titles.

It shall be unlawful for any person not holding a current and valid license from the State Board of Medicine to practice as a respiratory care practitioner or to assume the title, "Respiratory Care Practitioner" or to use, in conjunction with his name, the letters "RCP."

§ 54.1-2956. Advisory Board on Respiratory Care; appointment; terms; duties; etc.

A. The Advisory Board on Respiratory Care shall assist the Board in carrying out the provisions of this chapter regarding the qualifications, examination, and regulation of licensed respiratory care practitioners.

The Advisory Board shall consist of five members appointed by the Governor for four-year terms. Three members shall be at the time of appointment respiratory care practitioners who have practiced for not less than three years, one member shall be a physician licensed to practice medicine in the Commonwealth, and one member shall be appointed by the Governor from the Commonwealth at large.

Vacancies occurring other than by expiration of term shall be filled for the unexpired term. No person shall be eligible to serve on the Advisory Board for more than two consecutive terms.

B. The Advisory Board shall, under the authority of the Board, recommend to the Board for its enactment into regulation the criteria for licensure as a respiratory care practitioner and the standards of professional conduct for holders of licenses.

The Advisory Board shall also assist in such other matters dealing with respiratory care as the Board may in its discretion direct.

§ 54.1-2956.01. Exceptions to respiratory care practitioner's licensure.

The licensure requirements for respiratory care practitioners provided herein shall not prohibit the practice of respiratory care as an integral part of a program of study by students enrolled in an accredited respiratory care education program approved by the Board. Any student enrolled in accredited respiratory care education programs shall be identified as "Student RCP" and

shall only deliver respiratory care under the direct supervision of an appropriate clinical instructor recognized by the education program.

Amendments to Chapter 29 of Title 54.1

The proposed regulations are being promulgated to comply with statutory provisions of Senate Bill 599 (Chapter 557) of the 1998 General Assembly. These regulations are being promulgated as replacement for the Emergency Regulations mandated by a second enactment clause, which required the Board of Medicine to promulgate regulations to implement the act to be effective within 280 days of the enactment. (See attached copy of Chapter 557)

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 March 1, 1999 and subsequently sent to the Public Participation Guidelines Mailing List of the Board; there was no comment received.

f. Changes to existing regulations.

18 VAC 85-40-10. A definition of an "accredited educational program" was added in order to specify the accrediting body for respiratory care programs recognized by the Board as the Committee on Accreditation for Respiratory Care of the National Board for Respiratory Care (NBRC). A definition of "active practice" is added (not included in the emergency regulations) to specify that the active practice of respiratory care may include activities which are not direct patient care and which include 160 hours of practice within a 24-month period immediately preceding renewal or application for licensure from a person previously licensed or certified in another jurisdiction.

18 VAC 85-40-25. A new section was added to require licensees to furnish current name and address within 30 days of any change and to specify that notices mailed or served by the Board to the name and address on file shall be validly given.

18 VAC 85-40-40. Application requirements have been amended to state some of the current requirements that are found in other sections and to specify the documentation or verification necessary to become licensed as a respiratory care practitioner.

18 VAC 85-40-45. A new section is adopted to state the educational requirements as required by the statute. The requirements are those of the NBRC to sit for the entry level certification examination or to hold credentials as a CRTT or a RRT.

18 VAC 85-40-50. Amendments are editorial; current requirements for an applicant are restated in section 40.

18 VAC 85-40-60. An amendment to the requirements for renewal of license will provide for evidence of active practice which is defined in 18 VAC 85-40-10 as at least 160 hours of practice during the biennial renewal cycle, which is the minimal requirement for other licensed professions (such as occupational therapy or physical therapy) under the Board of Medicine.

18 VAC 85-40-65. The current regulations have no provision for reinstatement of an expired license regardless of length of expiration or lack of active practice. The new section will require the applicant for reinstatement of a license lapsed for more than two years to submit evidence of competency to practice – which may be active practice in another jurisdiction, continuing education or retraining in the profession. The proposed regulation also provides for reinstatement of a revoked license in accordance with provisions of § 54.1-2921 of the Code of Virginia.

18 VAC 85-40-80. The fee for late renewal of licensure was amended from $10 to $25 to be consistent with all other licensed professions under the Board of Medicine. Fees for reinstatement of a revoked license, for issuance of a duplicate license or a duplicate wall certificate were also added for consistency with other regulations and to recover costs incurred by the Board in the performance of these activities.

g. Statement of reasoning for the regulations.

The Board did not consider alternatives to the promulgation of regulations as it was mandated to do so by the statute. It did adopt the least burdensome regulation consistent with the specific provisions of the statutes and with its concern for public health and safety.

On the effective date of the legislation, July 1, 1998, the Board revised its regulations to change from certification to licensure under an exemption from the APA. On advice from the Assistant Attorney General, § 9-6.14:4. (C) (4) was applicable and the amendments were exempt from Article 2 of the Administrative Process Act, as "necessary to conform to changes in Virginia statutory law or the appropriation act where no agency discretion is involved". In making those amendments, the Board was not able to consider any changes which were discretionary and not strictly conforming to changes in the statute.

In the development of emergency regulations, the Advisory Board on Respiratory Therapy reviewed the qualifications for licensure, including education and examination and the requirements for renewal of licensure. The regulations were reviewed for consistency with

statutory provisions, with regulations for licensure of other professions under the Board of Medicine, and with national standards in respiratory care. The reasoning for the proposed regulations is stated as follows:

Qualifications for licensure.

In the statutory definition of a "respiratory care practitioner", there is a requirement that the person shall have passed the examination for entry level practice of respiratory care administered by the National Board for Respiratory Care, Inc. (NBRC), or other examination approved by the Board. Regulations for certification specify passage of that examination in order to hold the title of "respiratory therapist." The proposed regulations for licensure would also require that the applicant be a graduate of an accredited educational program or hold current credentialing as a Certified Respiratory Therapy Technician (CRTT) or as a Registered Respiratory Therapists (RRT) from the NBRC. If a person has passed the entry-level examination for respiratory therapy practitioners, which is required for licensure in Virginia, he is allowed to use the credential of CRTT. If a person has earned the higher credential of RRT, it indicates that they have taken the Registry Examination for Advanced Respiratory Therapy Practitioners.

Currently, all candidates for the national examination must be graduates of an accredited respiratory therapy educational program to qualify for testing. However, some RRT's prior to 1970 and CRTT's prior to 1974 were not required to be graduates of accredited educational programs since schools did not exist in an organized manner before those dates. Therefore, the NBRC recommends the language which the Board has proposed to enable persons to become licensed who have held the credentials and been practicing for a number of years.

Need for continuing competency requirements.

The Board of Medicine currently requires some evidence of continuing competency for licensed practitioners such as physical therapists (320 hours of active practice within the past four years), licensed acupuncturists (certification by NCCAOM requiring 100 hours of CME's in a two-year period), physician assistants (certification by NCCPA requiring 60 professional development activities in a four-year period) and occupational therapists (requirement for active practice during the renewal cycle). In addition, the Board is proposing specific hours of continued competency for physicians, chiropractors, podiatrists, occupational therapists and radiologic technologists.

Before July 1, 1998, respiratory care practitioners were certified by the Board of Medicine; no competency requirement was imposed for certification, which was title protection and therefore voluntary for practitioners.

Requirements for reinstatement of an expired or revoked license.

The Board determined that it was necessary to amend requirements for reinstatement of a license which had expired for two years or more or had been revoked. It has specified that the expired license may only be reinstated by payment of a reinstatement fee and submission of a reinstatement application which includes information on practice and licensure in other states during the period in which the license was lapsed in Virginia. A practitioner whose license has been revoked must submit a new application and meet requirements of § 54.1-2921.

Amendments to fees.

Fees were amended or added for consistency with other professions licensed by the Board. Therefore, the administrative fee for processing a late renewal by hand within the agency is raised from $10 to $25; a fee of $500 for renewing a revoked license is added; and fees of $10 for a duplicate license and $25 for a duplicate wall certificate were added.

h. Statement on alternatives considered.

Qualifications for licensure.

There were no alternatives considered for which examination should be accepted as a measure of competency for licensure. The NBRC entry level examination is given nationally and accepted by all states that license respiratory care providers. There is no another examination available, and for the Board to develop its own examination would be extremely costly and unnecessary.

The proposed regulation on educational qualifications is recommended as the most flexible and reasonable. The regulations would recognize the different pathways (graduation from an accredited educational program or credentialing by the NBRC) to national certification by the NBRC and impose no additional burden on applicants for licensure.

Continuing competency requirements

The Board considered what type of continuing competency requirement would be reasonable and appropriate for respiratory care practitioners and would, at the same time, provide the needed assurance to the public that minimal competency had been maintained. Since there is no national credentialing body or standard within the profession for continuing education or competency, the Board determined that evidence of 160 hours of active practice in the profession was the least burdensome regulation it could reasonably impose at this time. While it does not assure that the practitioner is learning new techniques and information, it does provide some assurance that he is remaining current in his professional knowledge and skills.

To accommodate persons whose respiratory care practice may now include educational, administrative, supervisory or consultative services rather than direct patient care,

the Board added a definition of "active practice" to clarify that those professional activities were acceptable for the purpose of fulfilled the renewal requirements.

A respiratory care practitioner who is maintaining an active license to practice should be required to work a minimal number of hours during the biennium in order to keep up with a rapidly changing, highly technical field. The requirement of 160 hours of practice with a two-year period is easily obtainable, even for persons who are working only on a part-time basis.

Requirements for reinstatement of an expired or revoked license.

The proposed regulation to require the applicant to provide complete information on practice and licensure in other jurisdictions during that period provides the Board with an opportunity to check on the safety and professionalism of the licensee who may have been in practice elsewhere during the time the license was lapsed in Virginia. The Board also maintains its authority to deny reinstatement to anyone who has committed acts in violation of law or regulation.

Amendments to fees.

Fees were amended or added for consistency with other professions licensed by the Board. The fees proposed are necessary to recover the administrative costs of the Board. For example, if a renewal notice with a fee are sent in before the deadline, it is processed at the bank contracted for that service and the license is automatically renewed. If it is received after the deadline, it is redirected back to the Department, where it must be processed manually. All boards charge an additional fee, which is both a penalty for a late renewal and an administrative charge. Likewise, the fees for providing duplicate licenses and wall certificates are necessary to cover costs and are consistent with fees of other professions under this board.

i. Statement of clarity.

Prior to the adoption of emergency regulations by the Board, the Advisory Board on Respiratory Care and the Legislative Committee discussed the changes in open sessions. The clarity and reasonableness of the language which was adopted had the approval of the respiratory therapists, the Assistant Attorney General who worked with the Advisory Committee in drafting regulatory language, and members of the Board.

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 of Medicine (18 VAC 85-10-10 et seq.) require a thorough review of regulations each biennium. Therefore, the Advisory Board on Respiratory Care and the Legislative Committee of the Board will review this set of regulations in 2001 and will bring any recommended amended regulations to the full board for consideration.

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 of Medicine 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 regulation.

(ii) Budget activity by program or subprogram: There is no change required in the budget of the Commonwealth as a result of this program.

(iii) One-time versus ongoing expenditures: The agency will incur some costs (less than $1000) for mailings to the Public Participation Guidelines Mailing List, conducting a public hearing, and sending copies of final regulations to regulated entities. Since these regulations are being amended simultaneously with other regulations of the Board, the costs of mailings, meetings and hearings will be shared by several professions. In addition, every effort will be made to incorporate those into anticipated mailings and board meetings already scheduled.

Projected cost on localities:

There is 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 respiratory care practitioners.

Estimate of number of entities to be affected:

There are 2,706 respiratory care practitioners licensed in Virginia.

Only a small number of practitioners will be affected by changes in fees. There may be 25 to 35 persons who will pay the additional $15 for a late renewal of licensure. Less than 10 persons will request a duplicate license or certificate, and thus far, the Board has never revoked the license of a respiratory care practitioner.