



Virginia
Regulatory
Town Hall

Final Regulation Agency Background Document

Agency Name:	Board of Nursing, Department of Health Professions
VAC Chapter Number:	18 VAC 90 -20
Regulation Title:	Regulations Governing the Practice of Nursing
Action Title:	Increase in fees
Date:	March 24, 2004

Please refer to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99) , and the *Virginia Register Form, Style and Procedure Manual* for more information and other materials required to be submitted in the final regulatory action package.

Summary

Please provide a brief summary of the new regulation, amendments to an existing regulation, or the regulation being repealed. There is no need to state each provision or amendment; instead give a summary of the regulatory action. If applicable, generally describe the existing regulation. Do not restate the regulation or the purpose and intent of the regulation in the summary. Rather, alert the reader to all substantive matters or changes contained in the proposed new regulation, amendments to an existing regulation, or the regulation being repealed. Please briefly and generally summarize any substantive changes made since the proposed action was published.

Fees related to application for and renewal of licensure as a registered nurse or a licensed practical nurse are being increased to provide sufficient funding for an increased disciplinary caseload related to mandated reporting of misconduct and to offset the decrease in revenue related to Virginia's entry into the Nurse Licensure Compact in January, 2005. Both initiatives result from legislation passed by the 2003 General Assembly. The biennial renewal fee will increase from \$70 to \$95, and other fees associated with the renewal fee will increase accordingly.

Changes Made Since the Proposed Stage

Please detail any changes, other than strictly editorial changes, made to the text of the proposed regulation since its publication. Please provide citations of the sections of the proposed regulation that have been altered since the proposed stage and a statement of the purpose of each change.

There were no changes made to the proposed regulation in the final adoption.

Statement of Final Agency Action

Please provide a statement of the final action taken by the agency: including the date the action was taken, the name of the agency taking the action, and the title of the regulation.

On March 23, 2004, the Board of Nursing adopted final amendments to 18 VAC 90-20-10 et seq., Regulations Governing the Practice of Nursing, in order to increase certain fees as necessary for implementation of changes to the disciplinary system and the Nurse Licensure Compact.

Basis

Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority, shall be provided. If the final text differs from that of the proposed, please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the final regulation and that it comports with applicable state and/or federal law

Regulations are promulgated under the general authority of Chapter 24 of Title 54.1 of the Code of Virginia. Section 54.1-2400 (6) provides the Board the authority to promulgate regulations to administer the regulatory system:

§ 54.1-2400 -General powers and duties of health regulatory boards

The general powers and duties of health regulatory boards shall be:

...

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 legal authority to promulgate the regulation for a fee increase is in fifth enactment clause of Chapter 762 of the 2003 Acts of the Assembly. See complete copy of HB 1441 (Chapter 762) - <http://leg1.state.va.us/cgi-bin/legp504.exe?031+ful+CHAP0762>

The legal authority to promulgate the regulation for a fee increase as needed to offset a loss of revenue related to the Nurse Licensure Compact is Chapter 249 of the 2003 Acts of the Assembly. See complete copy of HB 1871 (Chapter 249) – <http://leg1.state.va.us/cgi-bin/legp504.exe?031+ful+CHAP0249>

Purpose

Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the final regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.

The purpose of the regulatory action is to address the need for increased revenue related to two legislative actions of the 2003 General Assembly.

House Bill 1441

House Bill 1441 strengthened requirements for health care institutions to report misconduct by nurses when there is a “reasonable probability that such health professional may have engaged in unethical, fraudulent or unprofessional conduct as defined by the pertinent licensing statutes and regulations.” Both the time limit for reporting and the content of the report have been specified in the Code, and the civil penalty for failure to report has been increased from a maximum of \$10,000 to \$25,000.

Accordingly, the agency estimated that complaints or reports of misconduct by nurses could increase from 1400 to 1715 per year, resulting in approximately 315 new cases to fully investigate, 78 more informal conferences and 22 more formal hearings. In addition, there may be approximately 174 cases that will result in a confidential consent agreement, which must be prepared by legal staff and reviewed by counsel. During debate on the bill, it was clearly noted that the additional cost associated with compliance and implementation of HB1441 would result in increased costs for the affected boards and would generate an immediate need for additional revenue in order to address the increased number of reports, investigations and disciplinary cases sent to the Board. To fail to address misconduct by a nurse in a timely manner could place the public health and safety at risk.

In a comparison of the period from 7/1/02 to 3/15/03 and 7/1/03 to 3/15/04, there were 185 more cases involving nurses received by the Board for a 44% increase in the disciplinary caseload. With no other changes in law or regulation, much of that can be attributed to heightened awareness and response from mandated reporters. Those cases are in the investigative and proceedings stage, so the impact on the number of informal conferences and formal hearings is not yet apparent.

In response, the General Assembly included an enactment clause to authorize the promulgation of emergency regulations to increase fees. The fifth enactment clause in Chapter 762 of the 2003 Acts of the Assembly requires, “That the health regulatory boards shall promulgate regulations to address any fee adjustments necessary to accomplish the regulatory and enforcement responsibilities set forth in this act to be effective within 280 days of its enactment.” In compliance, the board adopted emergency regulations adding \$12 to the biennial renewal fee and proposes to include that increase in the promulgation of permanent regulations.

Through the first eight months following the effective date of HB 1441, the Board of Nursing has experienced an increase in its disciplinary load similar to what was projected. From 7/1/02 to 3/15/03, there were 418 new cases received involving licensees of Nursing; from 7/1/03 to 3/15/04, there were 603 for an increase of 185. Of the 241 reports from mandated reported during the same period since July 1, 2003, 149 of them were reports on registered nurses or licensed practical nurses.

House Bill 1871

House Bill 1871 authorizes Virginia's membership in a multi-state nursing compact that provides for the reciprocal recognition of other states' licenses to practice as a registered nurse or a licensed practical nurse. While the provisions of this bill will not become effective until January 1, 2005, the Board must begin the process of addressing the resulting loss of revenue, which can only be accomplished through an increase in fees charged to applicants and licensees.

Currently, there are 20 states that have implemented or are in the process of implementing membership in the Compact (including border states of North Carolina, Maryland, and Tennessee). For those nurses who hold a license in Virginia but reside in a Compact state, it will become unnecessary for them to retain a Virginia license as they will be practicing in Virginia on a multi-state licensure privilege. Therefore, it is expected that the Board of Nursing will realize a loss of revenue from renewals, application fees for licensure by endorsement, and fees for verification of licensure to other states.

While there may be some very modest savings from fewer licensees and fewer applicants, the expenditures for the Board are largely related to its disciplinary caseload, which would not be decreased by this action. Nurses who practice in Virginia, even though they hold a license in another state and pay their renewal fees to that state, would still be subject to the investigations and disciplinary proceedings in this state. Therefore, all the costs for investigating and conducting a hearing on a complaint of misconduct on a compact nurse will be borne by those nurses who hold a Virginia license. To ensure that there is sufficient revenue for the Board to continue its responsibility of licensing minimally competent nurses and taking disciplinary action against those who are impaired or unprofessional by the effective date of the Compact, it must begin to revise its fee schedule accordingly. If the Board delayed the adoption of increased fees related to the loss of revenue until after entry into the Compact, a deficit would likely result which would necessitate even higher fees to resolve the deficit and have sufficient revenue for current operations.

Failure to provide sufficient funding through the adoption of regulations to cover the costs of implementing this legislation would place the agency in non-compliance with the law. If the Board failed to increase fees sufficient to provide adequate staffing and support for investigative and disciplinary activities, the public health and safety would suffer by long delays in responding to complaints, processing cases and possibly removing incompetent or dangerous practitioners. The proposed regulatory action is essential to ensure that the Board and the Department have sufficient resources to respond to reports of misconduct in a timely and thorough fashion.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement of the regulatory action's detail.

To accommodate the projected increase in reporting, investigations and disciplinary proceedings for the Board of Nursing related to HB 1441, the agency calculated costs for additional staff, hearings, equipment and related expenses. It is estimated that by June 30, 2006 at the conclusion of the 2004-06 biennium, costs related to HB1441 could result in a \$2.1 million deficit for the Board. In order to adjust fees as necessary to accomplish the regulatory and enforcement responsibilities set forth in the act, the Board adopted an emergency regulation to increase the biennial renewal fee by \$12 and has set other fees accordingly.

The emergency action amended 18VAC90-20-30 to increase the biennial renewal fee for registered nurses and licensed practical nurses by \$12 from \$70 to \$82. Likewise, other fees which are associated with the licensing (renewal) fee were increased by a similar amount.

The fee increase necessary to offset the loss of revenue related to membership in the Compact has been estimated based on consultation with other Compact states and an internal review of the data systems modifications, staffing and administrative cost of implementation. In the fiscal impact statement prepared by the Department of Planning and Budget on HB1871 in 2003, the estimate was that renewal fees would need to increase by approximately \$10 per biennium; other fees would experience a similar increase. Since the FIS was prepared, additional states have voted to join the Compact, including Tennessee, so an additional loss of revenue can be anticipated. The total impact to the biennial budget of the Board is estimated to include a loss of revenue and addition to expenditures totaling \$1,318,700 for the '06 biennium. The nurses who are required to retain their Virginia licenses will need to absorb that amount through an increase in the biennial renewal of \$13. Combining the impact of increased disciplinary caseload and membership in the Compact, the Board determined that it was necessary to propose a \$25 per biennium in nursing renewal fees with a concomitant increase in application, reinstatement and late fees.

Issues

Please provide a statement identifying the issues associated with the final regulatory action. The term "issues" means: 1) the advantages and disadvantages to the public of implementing the new provisions; 2) the advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please include a sentence to that effect.

1) In order for the Department to continue processing applications, investigating complaints and conducting disciplinary proceedings against nurses, it is necessary for the Board to have sufficient funding. There are no direct advantages to the public in taking action to increase nursing renewal fees, but failure to act could place the public in jeopardy as there could be delays in licensing nurses, which would further exacerbate the nursing shortage in the state, and there could be significant delays in the investigation and adjudication of complaints of negligence or

other unprofessional conduct. To the extent the Board has acted in anticipation of its need for additional revenue to offset additional expenditures and loss of income, the public is well-served. There are no disadvantages to the public; a \$25 increase in a professional licensure fee payable every two years is not likely to deter persons interested in the entering the profession nor is it likely to cause any currently-practicing nurse to leave the profession.

2) The primary advantage to the Commonwealth is the availability of sufficient funding for the Department and the Board to carry out its statutory responsibilities. Since the agency is self-funded through its licensure fees, an increase in fees is the only mechanism for producing adequate income to meet its budget. There are no disadvantages to the agency or the Commonwealth.

3) There are no other matters of interest related to this regulatory action that are pertinent to the regulated community, government officials, and the public.

Public Comment

Please summarize all public comment received during the public comment period and provide the agency response. If no public comment was received, please include a statement indicating that fact.

Proposed regulations were published in the Virginia Register of Regulations on December 15, 2003. Public comment was requested for a 60-day period ending February 13, 2004. Proposed regulations replace emergency regulations that have been in effect since July 15, 2003 and also include an additional amount related to implementation of the Nurse Licensure Compact. A public hearing was held before the Board on January 27, 2004. There were no oral, written or electronic comments received.

Detail of Changes

Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or crosswalk - of changes implemented by the proposed regulatory action. Include citations to the specific sections of an existing regulation being amended and explain the consequences of the changes.

Current section number	Current requirement	Proposed change and rationale
30	Biennial renewal fee is \$70 (\$82 under the emergency regulation currently in effect)	Biennial renewal fee will be \$95. Of the \$25 increase, \$12 is related to the requirements of HB1441 on increased reporting and is already effective through an emergency action. An additional \$13 per nurse per biennium will be necessary to offset the additional expenditures and loss of revenue related to joining the Nurse Licensure Compact in January, 2005 as mandated by HB1871.

	<p>Application fee is \$105. Under the emergency regulation, the application fee is \$117)</p> <p>Late renewal fee is \$25. Under emergency regulations, the late fee is \$30.</p> <p>Reinstatement of lapsed license is \$120, \$132 under emergency regulations. Reinstatement of a suspended or revoked license is \$160, \$172 under emergency regulations.</p>	<p>Application fee will be \$130. Consistent with the Fee Principles, the application fee includes the first biennial renewal so the new licensee is not required to renew his license for at least two years. Therefore, the application fee must be increased by the same amount as the renewal fee.</p> <p>Late renewal fee will be \$35. According to the Fee Principles, the late fee should be approximately 1/3 of the renewal fee, so this fee is adjusted accordingly.</p> <p>Reinstatement fee for a lapsed license will be \$145; reinstatement for a suspended or revoked license will be \$185. As with the application fee, the reinstatement fee includes the biennial renewal and therefore is adjusted consistent with the increase in the renewal fee.</p>
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Family Impact Statement

Please provide an analysis of the regulatory action that assesses the impact on the institution of the family and family stability including the extent to which the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse, and one’s children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

In its analysis of the proposed regulatory action, the agency has determined that there is no potential impact on the institution of the family and family stability. There will be a modest impact on family income as renewal of licensure will increase from \$ 70 per biennium to \$95 or \$12.50 per year.