



Virginia  
Regulatory  
Town Hall

## Final Regulation Agency Background Document

<b>Agency Name:</b>	Board of Nursing, Department of Health Professions
<b>VAC Chapter Number:</b>	18 VAC 90-20-10 et seq.
<b>Regulation Title:</b>	Regulations Governing the Practice of Nursing
<b>Action Title:</b>	Fee increase
<b>Date:</b>	February 15, 2000

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*Please provide a brief summary of the new regulation, amendments to an existing regulation, or the regulation being repealed.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or changes contained in the proposed new regulation, amendments to an existing regulation, or the regulation being repealed.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.*

The Board of Nursing proposes amendments to its regulations in order to increase certain fees pursuant to its statutory mandate to levy fees as necessary to cover expenses of the board. Biennial renewal fees for registered nurses and licensed practical nurses would be increased from \$40 to \$70, for certified nurse aides from \$30 to \$45, and for clinical nurse specialists from \$30 to \$60. While other fees would also be increased, the fee for a late renewal within one biennium would decrease from \$50 to \$25. Fees sufficient to fund the operations of the Board are essential for activities such as licensing, approval of nurse education programs, investigation of complaints, and adjudication of disciplinary cases.

### 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 to the proposed regulations in the adoption of final amended regulations.

### 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 February 15, 2000, the Board of Nursing adopted final amendments to 18 VAC 90-20-10 et seq. Regulations Governing the Practice of Nursing.

### 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 of the Board of Nursing 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.

The Assistant Attorney General who provides counsel to the Board has certified that the amended regulations are consistent with statutory authority and do not conflict with existing law.

**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 proposed amendments is to establish fees sufficient to cover the administrative and disciplinary activities of the Board of Nursing. Without adequate funding, the approval of nursing education programs and the licensing of nurses and registration of certified nurse aides could be delayed. In addition, sufficient funding is essential to carry out the investigative and disciplinary activities of the Board in order to protect the public health, safety and welfare.

**Need for Fee Increases**

It is necessary for the Board of Nursing to increase their fees in order to cover expenses for essential functions of licensing, investigation of complaints against nurses and nurse aides, adjudication of disciplinary cases, and the review and approval of nursing education programs. Budgets for the nurse aide regulatory program and the nursing program are maintained separately but are funded through one set of regulations: 18 VAC 90-20-10 et seq. Regulations of the Board of Nursing.

In its analysis of the funding under the current fee structure for programs under the Board of Nursing, the following deficits have been projected:

<u>FY Ending</u>	<u>Board</u>	<u>Amount</u>	<u>Percent</u>
<i>6/30/99 (1)</i>	Nurse Aides	-\$315,253	-46.9%
<i>6/30/00</i>	Nurse Aides	-\$407,924	-48.2%
	Nursing	-\$1,299,307	-17.4%
<i>6/30/02</i>	Nurse Aide	-\$624,744	-60.7%
	Nursing	-\$4,615,498	-50.5%

§ 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 1999 fiscal year, the Board of Nursing will incur a deficit of \$315,253 or 46.9% of its total budget for the Nurse Aide program, and that the Board will continue to have deficits in both cost centers through the next two biennia. Since the fees from licensees no longer generate sufficient funds to pay operating expenses for the Board, a fee increase is essential.

Despite the efficiencies and reductions in staff (MEL from 132 to 119) which the Department and the Board have undertaken in the past five years, funding from fees has failed to keep up with expenditures. Renewal fees for Registered Nurses and Licensed Practical Nurses are \$40 each biennium and have not been increased since 1995 (\$1 of that amount is transferred to the Department of Health to fund the Nursing Scholarship Program).

With the severe reduction in federal funding in the early '90's, it was necessary for the Board to add a biennial renewal fee of \$20 for Certified Nurse Aides in 1995 and to increase it to \$30 in 1998. In the length of time it took to get final regulations in place, the deficits in the Nurse Aide Program continued to spiral, so the contemplated fees were sufficient to meet current expenses but insufficient to eliminate the deficit that had accumulated.

Fee increases are related to increased need for funds for staff pay and related benefit increases included in the Governor's budget and for the general costs of doing business beyond the department's control (Y2K compliance, the health practitioner intervention program, installation of new computer system, relocation of the Department, etc.) Attached is a chart of expenses, revenues and percentage of deficit for the two cost centers – Nursing and Nurse Aides – over the past two biennia, for the current biennium, and the projection for the next two biennia.

Fee increases for some categories of licensees regulated by the Board of Nursing are necessary in order for the Board and the Department to continue performing essential functions of licensing new nurses and of protecting the public from continued practice by incompetent or unethical nurses.

## 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.*

### **18 VAC 90-20-30. Fees.**

Fees are amended as follows:

- Fees for application for licensure have increased from \$25 to \$105 for registered nurses and licensed practical nurses and now include \$25 for application processing and credential review, the cost of a biennial renewal and license (\$70), and the cost of the wall certificate.
- A new fee of \$25 is proposed for processing another application and re-review of an applicant's credentials, if the application process and passage of the examination has not been completed within six months.
- The proposed biennial renewal fee increases from \$40 to \$70 and reflects the cost of the administrative and disciplinary activities of the Board of Nursing and the allocated costs of the Department.
- Currently, anyone who does not renew his license by the due date must be "reinstated" at a cost of \$50, regardless of the amount of time the license was expired. Proposed regulations would establish a late fee of \$25 for anyone who renews the expired license within the biennium (approximately 35% of the biennial renewal). If the license is allowed to lapse beyond the biennium, it would require reinstatement with an application review fee and payment of the late fee and biennial renewal fee for a combined total of \$120. For reinstatement following suspension or revocation, the applicant would pay an additional \$40 to help offset the additional disciplinary cost for a reinstatement hearing.
- 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.
- A fee for replacing a wall certificate is currently been paid by the person making the request directly to the vendor. The proposed fee of \$15 would make the process and fee uniform for all boards within the Department.
- The cost of verifying a license to another jurisdiction or sending all or part of a transcript is estimated to be \$25, so the proposed fees of \$25 for either activity reflects those costs.
- 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.

- The fee for licensure of a clinical nurse specialist would include \$25 for application processing and credential review, the cost of the biennial renewal for the license and \$10 for a wall certificate.
- The biennial renewal fee for a clinical nurse specialist is determined by the estimated administrative and disciplinary costs of the Board and allocated costs of the Department.
- Reinstatement of a clinical nurse specialist registration would be set at \$105 and would necessitate an application processing and credential review fee, payment of the late renewal fee and cost of a biennial license.
- The actual cost of verification of a clinical nurse specialist registration to another jurisdiction is estimated to be \$25, so there is no change proposed.
- The penalty for late renewal of a CNS registration is proposed to \$20 or 30% of the biennial renewal.

#### **18 VAC 90-20-190. Licensure by examination.**

An amendment is proposed to clarify that the “fee” referred to in subsection C 3 and in subsection H 2 is the “reapplication” fee of \$25.

#### **18 VAC 90-20-230. Reinstatement of licenses.**

Amendments are proposed to conform the policies on reinstatement of the Board of Nursing to those in the “Principles for Fee Development” for all boards within the Department. Under the current rule, anyone who is late renewing his license (even by one day) would pay the current renewal fee and a reinstatement fee of \$50. The proposed rule requires a person who wants to renew an expired license within one renewal cycle to pay a late fee of \$25 and the current renewal fee. Beyond the biennium, the lapsed license could be reinstated by submission of a reinstatement application and payment of a reinstatement fee.

The board also proposes a higher 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.

#### **18 VAC 90-20-350. Nurse aide registry.**

The proposed renewal fee for a certified nurse aide would increase from \$30 to \$45 per biennium; the charge for a returned check is increased from \$15 to \$25.

### **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.*

Prior to consideration of amendments to regulations by the Board of Nursing, 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.

### **ISSUE 1: Proration of initial licensure fees based on timing within the renewal cycle an applicant is initially licensed.**

It is unknown at the time of application for initial licensure when or if the applicant will qualify. Applicants may be delayed or ineligible because they fail to subsequently submit required information (such as transcripts or verification from other states), do not meet substantive requirements (education, experience, moral character, etc.) or fail to pass an examination. While most candidates are eventually found eligible, it is impossible to predict when or if any given candidate will be licensed.

Therefore, in order to prorate an initial ‘license fee’ for the current period of licensure it would require the assessment, after the determination of eligibility, of each newly qualified candidate (estimated to be 5880 per year, including licensure by examination and endorsement). To accomplish this, the Department would need to incur a cost to program automated systems to generate assessments in various occupational categories. In addition to generating the assessment, the agency will be required to receive and account for the additional payment. This task could possibly be contracted out, as we do with a number of lock box transactions. All exceptions to lock box transactions however, are handled in-house, which is an activity that would result in additional administrative costs.

Prorating of fees would have negative impact on prompt licensing of nurses. It is likely that it would add a minimum of 14 days and likely average 21 days to the time it will take to issue a license after approval (the period to generate an assessment, mailing out, writing of a check, return mail, and accounting for the fee). In many cases a candidate is legally prohibited from employment until the license is in hand. Therefore, the equity that may be achieved by prorating fees will not be of sufficient value to lead to its implementation. During the two to three weeks of delay, the applicant could have been working with a license issued promptly upon approval by the Board. The additional income earned during that period would far exceed the small amount of the initial licensure fee that might have been saved by a system of proration.

In the proposed regulations, all applicants for a nursing license would be licensed for a full two years once eligibility has been determined. Since nurses renew biennially in their birth month, some applicants may receive more than two years, but no one would receive less than the equivalent of a biennial renewal, which is the amount calculated for initial licensure in the application fee.



### **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. All newly licensed nurses receive at least a full biennial renewal cycle, so there is no advantage to prorating the initial licensure fee.

#### **ISSUE 2. Establishment of application and initial licensure fee for licensure by examination versus licensure by endorsement.**

In accordance with “Principles for Fee Development”, the initial application and licensure fee should be based on: 1) the cost to the Board for application processing and credential review; 2) the examination costs, when paid by the board; 3) an appropriate portion of the license fee (renewal cost) relative to the period that the initial license will be issued prior to the first renewal; 4) cost of preparation and mailing a wall certificate; and 5) any other activity unique to and directly associated with initial licensure. Based on those Principles, the application and licensure fee for licensure by examination and by endorsement should be identical. There is a similar amount of time spent in application processing and credential review, and there are no examination costs paid by the board. Candidates pay those costs directly to the examination services. Therefore, the application fee, which is currently \$25 for licensure by examination and \$50 for licensure by endorsement, would be identical in the proposed regulations.

Currently, newly licensed nurses pay only the costs of application processing and review. They receive their first biennial license and their wall certificate at no cost. Following the Principles, the policy of the Board, as reflected in proposed regulation, would be to include those costs in the initial application fee. Also, current regulations require a new application if the applicant does not complete the process and pass the examination within six months. Following the Principles, the re-application fee should be the amount necessary to cover costs for application processing and review (\$25), but should not include the licensure fee and the fee for a certificate because those amounts were already included in the initial application fee.

### **Advantages and disadvantages to the licensees**

For applicants for licensure, there is a disadvantage to the proposed regulation since the initial licensure and wall certificate fee would now be included in the application fee. Costs associated with that initial licensure are currently being borne by nurses in their renewal fee. Therefore, it would be more equitable for newly licensed nurses receiving the benefit of a license for a two-year period to pay the cost of that license.

For applicants for licensure by endorsement, the current application fee is double that of an applicant for licensure by examination. While all application fees will increase, both types of applicants will be paying an identical and equitable amount.

**ISSUE 3. 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. Registered nurses and licensed practical nurses proportionally account for similar costs for the Board of Nursing. They are similar in their rate of discipline and in their participation in the Health Practitioner Intervention Program (HPIP). Likewise, the amount of work entailed in application processing and credential review is similar for the two professions. The proposed renewal fee for the clinical nurse specialist is less because there are proportionally fewer disciplinary cases and less participation in HPIP.

There is a separate cost code and budget for certified nurse aides, so the proposed renewal fee is based accordingly.

**Advantages and disadvantages to the licensees**

Nurses licensed by the Board of Nursing will experience increased renewal fees under the proposed regulations. 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 nurses and nurse aides, adjudication of disciplinary cases, review and approval of nursing and nurse aide education program, verification of licensure and education to other jurisdictions and entities, and communications with nurses about current practice and regulation. For certified nurse aides, renewal fees must cover the costs for investigation of complaints and adjudication of disciplinary cases under the Administrative Process Act.

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

Currently, Board of Nursing regulations require a fee of \$50 for an expired license, regardless of the amount of time elapsed – one day or ten years. For a person who is simply late in paying the renewal fee, the current “reinstatement” fee may seem excessive. In the Principles, there is a distinction made between those who are expired (have failed to renew within one renewal cycle)) and those who are lapsed (have failed to renew beyond one renewal cycle). The appropriate late fee for an expired license should be set at 25 to 35% of the renewal fee (\$25 for a nurse or licensed practical nurse); the current renewal fee must also be paid. Since a reinstatement application is required for a licensee to reinstate a lapsed license, the reinstatement fee should include the current renewal fee, the late fee, and a credential review fee.

Reinstatement of a license which has been suspended or revoked necessitates an additional cost of a hearing before a panel of the Board. Therefore, an additional amount of \$40 is proposed for reinstatement of a suspended or revoked license to recover some of those costs to the Board.

**Advantages and disadvantages to the licensees**

For persons who are late in paying their biennial renewal but who pay within two years, there would be an advantage in the proposed regulations. Currently, the late fee is \$50; the proposed late fee is \$25. For those who fail to renew a license for more than a biennium, the proposed reinstatement will be a higher fee to cover the costs of a reinstatement application and the late fee.

#### **ISSUE 5. 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. Such activities as replacement of a duplicate license, duplicate certificate, or processing and collecting on a bad check are similar for all boards and should be based on cost estimates provided by the Deputy Director for Finance of the Department.

##### **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. For nurses, the fee for a duplicate license will be reduced from \$15 to \$5; the fee for a returned check will increase from \$15 to \$25.

##### **Advantage or disadvantages to the public**

Fee increases proposed by the Board of Nursing should have no disadvantage to the consuming public. There is no projection of a reduction in the number of applicants for licensure or the number of licensed persons available to provide nursing services to the public. An increase in the biennial renewal fee will result in an additional \$15 per year for a nurse's license and \$7.50 per year for a certified nurse aide. Nurse aides who work in facilities which receive Medicare and Medicaid funding are required to hold the certification.

There would be considerable disadvantages to the public if the Board of Nursing 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 nurses and nurse aides. In addition, there may be delays in adjudicating cases of substandard care, neglect, abuse or other violations, resulting in potential danger to the patients who are often the most sick and vulnerable consumers in the Commonwealth.

#### **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 November 22, 1999. Public comment was requested for a 60-day period ending January 21, 2000.**

**A Public Hearing before the Board of Nursing was held on November 30, 1999 at which the following public comment was received:**

One person representing the Virginia Association of Non-profit Homes for the Aging commented that the fee increase for certified nurse aides would cause a burden for those individuals, who are generally lower-waged positions.

One person representing a long-term care provider reiterated the concerns about imposing a higher renewal fee on persons who typically earn about \$7/hour. A fee of \$45 would be really excessive for many of their employees who are living paycheck to paycheck.

One person representing the Virginia Healthcare Association also expressed concern about the dramatic increase in the renewal fee for nurse aides.

One person who is a nurse educator in Chesterfield commented that the increased fees may discourage some persons from pursuing their education - from their current position as nurse aides to become LPN's or from position as LPN's to become RN's. She expressed concern that the quality and quantity of applicants would be further eroded.

**Board response:** As a Special Fund Agency, the Board has a statutory obligation to charge fees which are sufficient to meet the expenditures of the Board. Within the Board, there are two separate cost centers - one for the certified nurse aide program and one for other professions licensed or certified by the Board. Each program must be sustained by fees charged to regulants. Since the severe reduction in federal funding for the Nurse Aide Registry, that program has almost continuously operated in a deficit. By law, its functions cannot be underwritten by other cost centers - such as general funding for the Board of Nursing. The alternatives to an increase in fees would be to severely reduce the investigative and disciplinary functions of the Nurse Aide Registry and to eliminate nurse aides from eligibility to participate in the Health Intervention Practitioner Program for impaired health care professionals. Either would jeopardize the health and safety of patients, many of whom are the most vulnerable and frail persons in the Commonwealth.

**Written comment is summarized as follows:**

The Virginia Health Care Association, representing nursing facilities that employ the vast majority of nurse aides, expressed concerns about the proposed increase in renewal fees for nurse aides. They believe it will have an adverse effect on the hiring and retention of nurse aides, many of whom face financial hardship and find payment of even the current renewal fee difficult.

The Virginia Association of Nonprofit Homes for the Aging also expressed opposition to the increase in renewal fees for certified nurse aides.

**Board response:** The response is the same as above.

**2 persons** expressed opposition or concern about the increase in the renewal fees for certified nurse aides. Many long-term care facilities are experiencing a severe shortage of qualified nurse

aides or nursing assistants. Increased fees are another roadblock to those people remaining in health care.

**Board response:** The response is the same as above.

**2 persons** commented that they did not oppose an increase in fees but did oppose the amount of the increase. They cited the application and renewal fee increases as exorbitant and also raised questions about the disparity among fees.

**Board response:** As a Special Fund Agency, the Board has a statutory obligation to charge fees which are sufficient to meet the expenditures of the Board. The application fee is being substantially increased because the Board is including the first biennial licensure fee in that amount. All fees have been determined according to a set of Principles for Fee Development which were adopted by the Department and applied to all fee proposals.

**1 person** raised questions about whether the fee increase will allow the Board to break even or does this provide a surplus to the general fund.

**Board response:** The Board of Nursing is a Special Fund Agency that must be totally self-supported and receives no general fund income. By law, the Board must review its revenue and expenditures and adjust fees when it is indicated that the Board will incur a deficit of greater than 10%. Any surplus in funds is retained by the Board and carried over to the next biennium; it does not go to the General Fund. If the Board surplus exceeds 10% of its budget at the end of a biennium, it is authorized to enact a reduction in fees which may become immediately effective without a lengthy process of promulgating regulations.

## 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.*

### **18 VAC 90-20-30. Fees.**

Fees are amended as follows:

- Fees for application for licensure have increased from \$25 to \$105 for registered nurses and licensed practical nurses and now include \$25 for application processing and credential review, the cost of a biennial renewal and license (\$70), and the cost of the wall certificate.

- A new fee of \$25 is proposed for processing another application and re-review of an applicant's credentials, if the application process and passage of the examination has not been completed within six months.
- The proposed biennial renewal fee increases from \$40 to \$70 and reflects the cost of the administrative and disciplinary activities of the Board of Nursing and the allocated costs of the Department.
- Currently, anyone who does not renew his license by the due date must be "reinstated" at a cost of \$50, regardless of the amount of time the license was expired. Proposed regulations would establish a late fee of \$25 for anyone who renews the expired license within the biennium (approximately 35% of the biennial renewal). If the license is allowed to lapse beyond the biennium, it would require reinstatement with an application review fee and payment of the late fee and biennial renewal fee for a combined total of \$120. For reinstatement following suspension or revocation, the applicant would pay an additional \$40 to help offset the additional disciplinary cost for a reinstatement hearing.
- 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.
- A fee for replacing a wall certificate is currently been paid by the person making the request directly to the vendor. The proposed fee of \$15 would make the process and fee uniform for all boards within the Department.
- The cost of verifying a license to another jurisdiction or sending all or part of a transcript is estimated to be \$25, so the proposed fees of \$25 for either activity reflects those costs.
- 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.
- The fee for licensure of a clinical nurse specialist would include \$25 for application processing and credential review, the cost of the biennial renewal for the license and \$10 for a wall certificate.
- The biennial renewal fee for a clinical nurse specialist is determined by the estimated administrative and disciplinary costs of the Board and allocated costs of the Department.
- Reinstatement of a clinical nurse specialist registration would be set at \$105 and would necessitate an application processing and credential review fee, payment of the late renewal fee and cost of a biennial license.
- The actual cost of verification of a clinical nurse specialist registration to another jurisdiction is estimated to be \$25, so there is no change proposed.

- The penalty for late renewal of a CNS registration is proposed to \$20 or 30% of the biennial renewal.

**18 VAC 90-20-190. Licensure by examination.**

An amendment is proposed to clarify that the “fee” referred to in subsection C 3 and in subsection H 2 is the “reapplication” fee of \$25.

**18 VAC 90-20-230. Reinstatement of licenses.**

Amendments are proposed to conform the policies on reinstatement of the Board of Nursing to those in the “Principles for Fee Development” for all boards within the Department. Under the current rule, anyone who is late renewing his license (even by one day) would pay the current renewal fee and a reinstatement fee of \$50. The proposed rule who require a person who wants to renew an expired license within one renewal cycle to pay a late fee of \$25 and the current renewal fee. Beyond the biennium, the lapsed license could be reinstated by submission of a reinstatement application and payment of a reinstatement fee.

The board also proposes a higher 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.

**18 VAC 90-20-350. Nurse aide registry.**

The proposed renewal fee for a certified nurse aide would increase from \$30 to \$45 per biennium; the charge for a returned check is increased from \$15 to \$25.

### 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.*

The Board has reviewed the adopted regulations and concluded that the amendments have no effect on strengthening the authority and rights of parents, on economic self-sufficiency, or on the marital commitment. An increase in fees will have a very minor effect on disposable family income; for registered nurses and licensed practical nurses, there will be an additional cost of \$15.00 per year to retain an active license to practice. For certified nurse aides who must maintain certification to work in facilities that receive Medicare funding, there will be an increase of \$7.50 per year.