



**Virginia
Regulatory
Town Hall**

**Notice of Intended Regulatory Action
Agency Background Document**

Agency Name:	Board of Nursing Home Administrators, Department of Health Professions
VAC Chapter Number:	18 VAC 95-20-10 et seq.
Regulation Title:	Regulations Governing the Practice of Nursing Home Administrators
Action Title:	Increase in fees
Date:	4/20/2001

This information is required prior to the submission to the Registrar of Regulations of a Notice of Intended Regulatory Action (NOIRA) pursuant to the Administrative Process Act § 9-6.14:7.1 (B). Please refer to Executive Order Twenty-Five (98) and Executive Order Fifty-Eight (99) for more information.

Purpose

Please describe the subject matter and intent of the planned regulation. This description should include a brief explanation of the need for and the goals of the new or amended regulation.

The issue to be addressed is the need of the Board of Nursing Home Administrators to increase their fees to cover expenses for essential functions of the approving preceptorships, licensing administrators, investigation of complaints against licensees, and adjudication of disciplinary cases required for public safety and security in the Commonwealth.

In its analysis of the funding under the current fee structure for programs under the Board of Nursing Home Administrators, the following deficit has been projected:

<u>FY Ending</u>	<u>Amount</u>	<u>Percent</u>
6/30/02	-\$65,496	-17.18%

§ 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 2000-2002 biennium, the Board of Nursing Home Administrators will incur a deficit and that the Board will continue to have a deficit through the next biennium. Since the fees from licensees will no longer generate sufficient funds to pay operating expenses for the Board, consideration of a fee increase is essential. In order to have sufficient funding for the operation of the Board by fiscal year 2002, it is necessary to begin the promulgation of amendments to regulations.

No preliminary regulatory language has been developed; the agency will develop alternative fee structures that will address the deficit in funding for the Board to consider in its adoption of proposed regulations. Expenditures related to various functions of the Board will be examined to determine if fees directly related to those activities are sufficient to cover the expenses. In addition, the Board will apply the Principles for Fee Development adopted by the agency in 1999 to ensure equitable distribution of costs and fees that are proportional to the activities they support.

Basis

Please identify the state and/or federal source of legal authority to promulgate the contemplated regulation. The discussion of this authority should include a description of its scope and the extent to which the authority is mandatory or discretionary. The correlation between the proposed regulatory action and the legal authority identified above should be explained. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority must be provided.

18 VAC 95-20-10 et seq. Regulations Governing the Practice of Nursing Home Administrators are promulgated under the general authority of Title 54.1, Chapter 24 of the Code of Virginia.

Chapter 24 establishes the general powers and duties of health regulatory boards including the responsibility to promulgate regulations in accordance with the Administrative Process Act which are reasonable and necessary and the authority to **levy and collect fees** that are **sufficient to cover all expenses** for the administration of a regulatory program.

§ 54.1-2400. General powers and duties of health regulatory boards.--The general powers and duties of health regulatory boards shall be:

- 5. To levy and collect fees for application processing, examination, registration, certification or licensure and renewal that are sufficient to cover all expenses for the administration and operation of the Department of Health Professions, the Board of Health Professions and the health regulatory boards.*
- 6. To promulgate regulations in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.) which are reasonable and necessary to administer effectively the regulatory system. Such regulations shall not conflict with the purposes and intent of this chapter or of Chapter 1 (§ 54.1-100 et seq.) and Chapter 25 (§ 54.1-2500 et seq.) of this title.*

The **contemplated regulation is mandated by § 54.1-113**; however the Board must exercise some discretion in the amount and type of fees that will be increased in order to comply with the statute.

§ 54.1-113. Regulatory boards to adjust fees.--Following the close of any biennium, when the account for any regulatory board within the Department of Professional and Occupational Regulation or the Department of Health Professions maintained under § 54.1-308 or § 54.1-2505 shows expenses allocated to it for the past biennium to be more than ten percent greater or less than moneys collected on behalf of the board, it shall revise the fees levied by it for certification or licensure and renewal thereof so that the fees are sufficient but not excessive to cover expenses.

Substance

Please detail any changes that would be implemented: this discussion should include a summary of the proposed regulatory action where a new regulation is being promulgated; where existing provisions of a regulation are being amended, the statement should explain how the existing regulation will be changed. The statement should set forth the specific reasons the agency has determined that the proposed regulatory action would be essential to protect the health, safety or welfare of citizens. In addition, a statement delineating any potential issues that may need to be addressed as the regulation is developed shall be supplied.

Funding from fees has failed to keep up with expenditures in the past two years. Since the Board had accumulated a surplus from prior years, it has been able to avoid a fee increase up until now. By the end of fiscal year '99, the Board had under-spent its budget by \$17, 091, but revenue fell short of the estimate (\$165,400 estimated; \$139,554 realized).

In June 2000, the balance sheet showed that the Board had reduced its estimation of expenditures, but the actual expenditures for the fiscal year exceeded the estimation by \$3,100. Again the revenue realized fell short of projections, resulting in a deficit of almost \$17,000. For FY '01 and FY '02, the projected revenue is \$304,776 and the Board's projected budget is \$381,185, so it is likely that it will incur a deficit in excess of 17% by 2002.

Attached is a chart of expenditures and revenues of the Board for the past fiscal year and a chart showing the projected revenue balance for June 30, 2002.

Renewal Fees and Consumer Price Index (CPI) Adjustments 1990 - 2000

During the period from 1990 to January 2001, the CPI has increased approximately 37.4 percent while fees for nursing home administrators in Virginia **have not been increased** since 1994. At that time, the renewal fee for nursing home administrators increased from \$100 to \$125 and for fees for preceptors went from \$50 to \$63. In 1998, there was a modest reduction in several fees, including the preceptor renewal which decreased from \$63 to \$60.

Annual Renewal Fees for regulants of the Board of Nursing Home Administrators

Occupation	Current fee	FY '98	FY '96
Nursing home administrators	\$125	\$125	\$125
Preceptors	\$60	\$63	\$63

Comparison of renewal fees in other states

In West Virginia, the application fee is \$400, and the annual renewal fee is \$200 for a nursing home administrator. In Tennessee, the application fee is \$250 and the biennial renewal fee is \$190. In Maryland, the application fee is \$100; the state exam costs \$125 and the biennial renewal fee is \$100.

Need for Fee Increases

Fee increases are related to increased need for funds for staff pay and related benefit increases over the past few years and for the general costs of doing business, such as operation of the DHP data system and the health practitioner intervention program. Other costs are specifically related to the Board of Nursing Home Administrators. For example, in FY '99, the Board overspent its budget for enforcement by \$12,261 and ended the biennium with a deficit of \$3,877 in that line item.

Fee increases for licensees regulated by the Board of Nursing Home Administrators are necessary in order for the Board and the Department to continue performing essential functions of approving administrators-in-training, issuing permits to preceptors, and licensing nursing home administrators and of protecting the public from continued practice by incompetent or unethical practitioners.

Renewal Schedule

Nursing home administrators licensed by the Board renew their licenses every year by March 31st. Therefore, it is essential to have an increased fee in place in 2002 in order to prevent a deficit from occurring by the time licenses are again renewed in the year 2003.

Alternatives

Please describe, to the extent known, the specific alternatives to the proposal that have been considered or will be considered to meet the essential purpose of the action.

In 1999-2000, the department considered **three** possible solutions to the deficits incurred by several boards. Those same options are available to the Board of Nursing Home Administrators and are as follows:

1. Increase fees through the promulgation of regulations.

As required by law, the Board is obligated to establish and collect fees that are necessary to fund operations of the Board and the Department. An alternative is to seek the revenue from licensees and applicants to fully fund appropriated expenditures. Costs of services will be paid by patients who use the services of providers, but licensure fees represent a miniscule percentage of the over-all costs of health care. The cost of operation of regulatory boards does not significantly affect the cost or access to health care. However, failure to fully fund the licensing and disciplinary services through fees will have a detrimental affect on quality and availability of care.

2. General Fund Support.

If the alternative is not to increase professional fees to meet increased cost of operations, then the only other source of funding the cash deficit is the General Fund. To permit General Fund support, the *Code of Virginia* would need to be amended to allow such funding as the *Code* restricts board revenue to fees. There are, however, potential and serious consequences with General Fund support.

1. Increasing General Fund support as more boards acquire deficits in the future.
2. Negative public reaction.
3. The use of general revenues (taxes) to support health regulatory boards which does not target costs to providers and consumers of services.

3. Reduce department/board operations and staff and remain at current fee level.

In order to prevent deficit spending, the department would basically need to lay off staff to reduce expenses associated with operations. The net result being a delay in the performance of or the elimination of the following responsibilities:

- **Investigations and discipline**
- **Examinations leading to license**
- **License renewals**
- **Regulation**
- **Inspections and approvals of new facility permits**

Delays in licensing and investigation could place a very frail population at great health risk as nursing home administrators who should not be practicing would continue to practice, and the supply of administrators needed for the long term care system would be delayed or curtailed. It is believed that these consequences would not be acceptable to the administration, the General Assembly, or to the general public.

Family Impact Statement

Please provide a preliminary analysis of the potential impact of the proposed regulatory action on the institution of the family and family stability including to what extent 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 proposed regulatory action would not strengthen or erode the authority and rights of parents, encourage or discourage economic self-sufficiency, or strengthen or erode the marital

commitment. There could be a very modest decrease in disposable family income depending on the amount and nature of the fee increase.