



Virginia
Regulatory
Town Hall

Final Regulation 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:	Fee increase
Date:	10/31/02

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Please provide a brief summary of the new regulation, amendments to an existing regulation, or the regulation being repealed.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or changes contained in the proposed new regulation, amendments to an existing regulation, or the regulation being repealed.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

Amendments to regulation are adopted in order to increase certain fees for the regulants of the Board, including nursing home administrators and preceptors, as necessary to provide sufficient funding for the licensing and disciplinary functions of the Board. An annual renewal fee for a nursing home administrator would be increased from \$125 to \$225 and for a preceptor from \$60 to \$100. The application fee for licensure would increase from \$150 to \$200, but application fees for preceptors and administrators-in-training would remain the same. Other fees would be increased correspondingly; and some miscellaneous fees, such as the duplicate license and wall certificate charge, will be decreased.

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 text since its publication.

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 October 30, 2002 , the Board of Nursing Home Administrators adopted final amendments to 18 VAC 95-20-10 et seq., Regulations Governing the Practice of Nursing Home Administrators, in order to implement a fee increase as required by law as necessary to have sufficient funds to meet expenditures.

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

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.*

The specific statutory mandate for an increase in fees is found in § 54.1 113:

§ 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 Office of the Attorney General has certified by letter that the Board has the statutory authority to promulgate the amended regulation and that it comports with applicable state and/or federal 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.

§ 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 deficit will continue to grow through the next biennium. Since the fees from licensees will no longer generate sufficient funds to pay operating expenses for the Board, a fee increase is essential.

The purpose of the amendments is to establish fees sufficient to cover the administrative and disciplinary activities of the Board. Without adequate funding, the licensing of practitioners and preceptors who provide training for those seeking to become administrators could be delayed. The Code of Virginia requires all licensed nursing homes to be under the supervision of a licensed administrator. Sufficient funding is essential to continue the approval of applicants for a training program and for licensure and the investigation of complaints and disciplinary proceedings against practitioners who are accused of substandard care, or violations of law and regulation in order to protect the public health and safety.

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.

Section 80 is being amended to comply with a statutory mandate for the Board to provide sufficient funding to cover expenses related to approvals of administrators-in-training (AIT) and preceptors, licensing, investigations and disciplinary proceedings. Annual renewal fees for a nursing home administrator would be increased from \$125 to \$225 and for a preceptor from \$60 to \$100. Fees for late renewal and reinstatement would also be increased proportionately. Application fees for the AIT program and for preceptors would not be changed, but the application fee for a nursing home administrator would increase from \$150 to \$200. Some miscellaneous fees for duplicate licenses and wall certificates would be decreased.

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) The primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions:

While fee increases proposed by the Board of Nursing Home Administrators should have no specific disadvantage to the consuming public, the ever-increasing shortage of administrators is of concern. As the population ages, there will be an increasing rather than decreasing need for qualified persons to administer those facilities. According to persons in the profession and affiliated with the nursing home industry, there are numerous root causes for the decrease in supply of administrators –relating to the extraordinary regulatory burden of federal and state laws and rules governing the operation of a nursing home, the availability of similar professional opportunities in less-regulated environments (assisted living facilities) and the profession's lack of appeal to younger persons. While the increased fee will not enhance the prospects for increasing the number of licensees, the Board does not believe that licensure fees alone will result in a reduction in the number of applicants for licensure or the number of licensed persons available to provide administrator services to the public. It is also not anticipated that the proposed fee increases will have any effect on prices for consumers.

There would be disadvantages to the public if the Board took no action to address its deficit by increasing its fees to cover 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 candidates to sit for examinations. Potentially, the most serious consequence would be a reduction in or reprioritization of disciplinary cases handled by the Department and the Board. There could be

delays in adjudicating cases of substandard practice, resulting in potential danger to patients in the Commonwealth.

Applicants and practitioners licensed by the Board 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 special-fund agency, renewal fees pay the vast majority of the expenses of Board operations, which include inspections, investigation of complaints, adjudication of disciplinary cases, review and approval of applicants, verification of licensure and education to other jurisdictions and entities, and communications with licensees about current practice and regulation.

2) The primary advantages and disadvantages to the agency or the Commonwealth:

As is stated above, the consequence of not increasing fees of the Board would be a reduction in services and staff, resulting in delays in licensing, reductions or delays in the cases investigated and brought through administrative proceedings to a hearing before the. The fees charged to applicants and licensees solely fund the Board and the Department of Health Professions. If higher fees are not adopted, the agency would have to cut its staff, both within the Board of Nursing Home Administrators and within other divisions of the Department of Health Professions.

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 August 12, 2002. Public comment was requested for a 60-day period ending October 11, 2002. There was one written comment received:

A nursing home administrator sent an email objecting to an increase in the renewal fee and stating that the current fee exceeds many other states and is more than adequate.

A Public Hearing before the Board of Nursing Home Administrators was held on October 9, 2002 at which no public comment was 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.

18 VAC 95-20-80. Fees.

Amendments are adopted to establish the fees for licensees as follows:

- The application for licensure will increase from \$150 to \$200.
- Verification of licensure to other states will increase from \$10 to \$25.
- The annual renewal fee for a nursing home administrator license will increase from \$125 to \$225.
- The annual renewal fee for a preceptor will increase from \$60 to \$100.
- The fee for a late renewal of a nursing home license within the one year will increase from \$50 to \$65 or approximately 1/3 of the renewal fee.
- The fee for a late renewal of a preceptor license within the one year will increase from \$25 to \$35 or approximately 1/3 of the renewal fee.
- The reinstatement fee for a nursing home administrator whose license is expired for more than one year will increase from \$225 to \$315 (to include the renewal fee, the late fee and an application review fee).
- The reinstatement fee for a preceptor whose license is expired for more than one year will increase from \$110 to \$150 (to include the renewal fee, the late fee and an application review fee).
- The fee for a duplicate license will decrease from \$25 to \$15 and for a duplicate wall certificate from \$50 to \$25. These fees are consistent with miscellaneous fees in other boards and reflect actual costs of providing those services.

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 preliminary 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 an impact on disposable family income, as nursing home administrators and preceptors will experience an increase in the cost of licensure. Compared to other costs of doing business or compliance with state and federal rules for long term care facilities, administrator licensure fees are relatively modest.