



Virginia
Regulatory
Town Hall

Notice of Intended Regulatory Action Agency Background Document

Agency Name:	Board of Psychology, Department of Health Professions
VAC Chapter Number:	18 VAC 125-20-10 et seq.
Regulation Title:	Regulations Governing the Practice of Psychology
Action Title:	Increase in fees
Date:	6/14/2001

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 Psychology to increase their fees to cover expenses for essential functions of the approving, licensing, 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 Psychology, the following deficit has been projected:

<u>FY Ending</u>	<u>Amount</u>	<u>Percent</u>
6/30/02	-\$147,783	-21.61%

§ 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. This Board has been in a deficit for the past two

biennia and is projected to continue to have a deficit by the close of 2000-2002 and through the next biennium thereafter. Since the fees from licensees do not provide sufficient funds to pay the expenditures 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 2003, it is necessary to begin the promulgation of amendments to regulations.

While no preliminary regulatory language has been developed, the intent of the Board is to alter the renewal cycle from biennially in the licensee's birth month to annually on a set date in the year. That schedule was in existence in 1996 before regulation of clinical psychologists became solely the responsibility of this Board rather than jointly regulated with the Board of Medicine. By returning to an annual renewal, the impact of a higher fee will be lessened.

The agency will develop alternative fee structures and renewal schedules 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 125-20-10 et seq. Regulations Governing the Practice of Psychology 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 biennia. In the promulgation of amended regulations to implement a modest fee increase in 1999-00, the Board originally projected that the new fees would result in income of \$649,000 for the '00-'02 biennium. With the amended fees, the Board projected it would continue to have a small deficit (-\$35,284) by the close of this biennium, but that revenues would exceed the projected budget and the deficit could be eliminated by the close of the '02-'04 biennium. That projection was based on an assumption that the amended fee structure could be in place by the beginning of the biennial renewal cycle on January 1, 2000. In fact, amended regulations did not become effective until April of 2000, resulting in the loss of 1/3 of the increased revenue for the biennium. Therefore, in June 2000, the balance sheet showed that actual revenue of \$523,180 was below the biennial estimate of \$588,870, resulting in a carry-over deficit of \$110,958 rather than the \$75,044 that had been estimated.

In addition, the number of persons being licensed or certified by the Board has remained relatively flat versus the projected numbers. For example, it had been anticipated that there would be 2223 clinical psychologists by 2002 for an increase of 338; the number of licensed clinical psychologists is actually 1,918 for an increase of only 23 licensees. The number of applied psychologists and certified sex offender treatment providers has actually declined since 2000.

For FY '01 and FY '02, the projected revenue is \$647,110 and the Board's projected budget is \$683,935, so with a deficit of \$110,958 carried forward from the previous biennium, it is likely that it will incur a deficit in excess of 21% by 2002. To date, the actual deficit for the '00-'02 biennium stands at just under \$100,000.

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 Psychology in Virginia have only increased approximately 18% since 1994. At that time the annual renewal fee was \$95; it is currently \$225 biennially.

Renewal Fees for regulants of the Board of Psychology

Occupation	Current fee	FY '98	FY '96
Psychologists	\$225/biennial	\$200/biennial	\$95/annual

Comparison of renewal fees in other states

Renewal fees for licensed psychologists vary widely across the country. Among those that are higher than the current fee in Virginia are: (all amounts are calculated as a biennial renewal) Alaska (\$700); Washington (\$550); Minnesota (\$500); Oklahoma, Wyoming, South Dakota; Florida, California, Mississippi (\$400); Texas (\$320); Montana, Missouri, Nebraska (\$300); Idaho (\$280); New Hampshire (\$270). Among our neighboring states, the renewal fees are: North Carolina (\$200); Kentucky (\$300); Maryland (\$250); and Tennessee (\$200); Georgia (\$350); West Virginia (\$250); South Carolina (\$240) and D.C. (\$120).

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.

Fee increases for licensees regulated by the Board of Psychology are necessary in order for the Board and the Department to continue performing essential functions of approving supervisors, reviewing education and training and licensing psychologists and of protecting the public from continued practice by incompetent or unethical practitioners.

Renewal Schedule

Psychologists licensed by the Board renew their licenses in their birth month in even years. Therefore, it is essential to have an increased fee in place in 2003 in order to prevent the deficit from widening by the time licenses are again renewed in the year 2004.

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 Psychology 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 Psychology 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.