

**PRELIMINARY DETERMINATION
NOTICE OF INTENDED REGULATORY ACTION**

**DEPARTMENT OF HEALTH PROFESSIONS
BOARD OF LICENSED PROFESSIONAL COUNSELORS, MARRIAGE
AND FAMILY THERAPISTS AND SUBSTANCE ABUSE
PROFESSIONALS**

**18 VAC 115-20-10 et seq. Regulations Governing the Practice of Licensed
Professional Counselors**

**18 VAC 115-30-10 et seq. Regulations Governing the Certification of
Substance Abuse Counselors**

**18 VAC 115-40-10 et seq. Regulations Governing the Certification of
Rehabilitation Providers**

**18 VAC 115-50-10 et seq. Regulations Governing the Practice of Marriage
and Family Therapists**

**18 VAC 115-60-10 et seq. Regulations Governing the Practice of Licensed
Substance Abuse Treatment Practitioners**

ITEM 1: LEGAL AUTHORITY THE REGULATION

Regulations for the Board of Licensed Professional Counselors, Marriage and Family Therapists and Substance Abuse Professionals 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 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.

ITEM 2: POTENTIAL ISSUES TO BE ADDRESSED

The issue to be addressed is the need of the Board of Licensed Professional Counselors, Marriage and Family Therapists and Substance Abuse Professionals to increase their fees to cover expenses for essential functions of licensing, investigation of complaints against counselors, adjudication of disciplinary cases, and the review and approval of supervised residencies.

In its analysis of the funding under the current fee structure for programs under the Board of Licensed Professional Counselors, Marriage and Family Therapists and Substance Abuse Professionals, the following deficits have been projected:

<u>FY Ending</u>	<u>Amount</u>	<u>Percent</u>
6/30/00	-\$337,556	-33.2%
6/30/02	-\$765,186	-68.1%

§ 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 fiscal year, the Board of Licensed Professional Counselors, Marriage and Family Therapists and Substance Abuse Professionals will incur a deficit of \$337,556 or 33.2% of its total budget and that the deficit will continue to escalate. Since the fees from licensees no longer generate sufficient funds to pay operating expenses for the Board, consideration of a fee increase is essential.

No preliminary regulatory language has been developed; the agency will develop alternative fee structures which will address the deficit in funding for the Board to consider in its adoption of proposed regulations.

ITEM 3: REASONING FOR THE CONTEMPLATED REGULATION

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 all types of counselors were set at \$75 each biennium in 1997.

Renewal Fees for regulants of the Board of Licensed Professional Counselors, Marriage and Family Therapists and Substance Abuse Professionals

Occupation	Current fee	FY '98	FY '96
Professional counselor	\$75	\$75	\$85
Marriage & family therapist	\$75	\$75	N/A
*Rehabilitation provider	\$50	\$50	\$50
Substance abuse counselor	\$40	\$40	\$40

* Annual renewal – Other professions renew biennially

Fees for professional counselors are the half the amount they were in 1989, when the fee was \$75 annually. From 1991 to 1993, the renewal fee was \$100 each year; from 1994 to 1996, the fee was \$85 annually; then it was reduced to \$75 biennially.

Fees for substance abuse counselors have decreased since 1989 from \$50 each year to the current fee of \$40 each biennium. The professions of rehabilitation provider and marriage and family therapy were newly regulated in 1996 and 1997 respectively, and fees have not changed since that time.

While information on comparative data on professional counselor fees in other states is preliminary, it would indicate that Virginia’s fees are not out of line. In NC and TN, the renewal fees is \$100 biennially. The fees range up to \$425 biennially.

Fee increases are likely to occur primarily in the renewal fees paid by current licensees and certificate holders, since costs and services provided to those persons have contributed to the exiting shortfall. In addition, application fees are now being paid to an outside vendor with which the board contracted in 1997 to process applications.

Need for Fee Increases

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, etc.) Attached is a chart of expenses, revenues and percentage of deficit for the Board of Licensed Professional Counselors, Marriage and Family Therapists and Substance Abuse Professionals – over the past two biennia, for the current biennium, and the projection for the next two biennia.

Fee increases for licensees regulated by the Board of Licensed Professional Counselors, Marriage and Family Therapists and Substance Abuse Professionals are necessary in order for the Board and the Department to continue performing essential functions of licensing new counselors and of protecting the public from continued practice by incompetent or unethical practitioners.

ITEM 4: ALTERNATIVES CONSIDERED

The department considered **three** possible solutions to the deficits in the Board of Licensed Professional Counselors, Marriage and Family Abuse Therapists, and Substance Abuse Professionals.

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. (Licensed professional counselors and marriage and family therapists in private practice, which constitutes the majority of the board's licensees, charge approximately \$75 per hour for their services. It is unlikely that an increase in the renewal fee will have any effect on the cost of services for families and individuals seeking those services.) The cost of operation of regulatory boards (\$12.5million annually for over 230,000 providers) will not affect the cost or access to health care. However, failure to fully fund the services through fees will have a detrimental effect on quality.

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 regulated services.

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

In general, the Department's overall expenditures have been very moderate over the past six years. Total expenses for FY 93 were \$8.2 million, for FY 98 \$10.6 million an increase of 29.2 percent for the period or just under 4.5 percent each year, just slightly more than the amount of employee pay raises and benefit increases for the period.

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**
- **Approval of residencies and supervisors**

Delays in licensing and investigation could place the general population at health risk as psychologists who should not be practicing would continue to practice, and the supply of new licensees needed for the mental health 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.

Department of Health Professions
Schedule for Promulgation of Regulations on Fees for the
Virginia Board of Licensed Professional Counselors, Marriage & Family
Therapists, and Substance Abuse Practitioners

Submission of pre-NOIRA to DPB & SHHR	3/8/99
Submission of NOIRA to Register	3/24/99
Publication of NOIRA	4/12/99
End of 30-day Comment Period	5/12/99
Adoption of proposed regulations	5/13/99
Pre-Submission packages to DPB & SHHR	7/1/99
Submission of proposed regulations to Register	8/11/99

Publication of proposed regulations	8/30/99
End of 60-day comment period	10/29/99
Adoption of final regulations	11/19/99
Submission of final regulations to Register	12/1/99
Publication of final regulations	12/20/99
Final effective dates	1/20/00