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Final Regulation Agency Background Document

Agency name	Board for Hearing Aid Specialists and Opticians
Virginia Administrative Code (VAC) Chapter citation(s)	18 VAC 80 - 20
VAC Chapter title(s)	Hearing Aid Specialists Regulations
Action title	Fee Adjustment
Date this document prepared	January 20, 2023

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

The Board for Hearing Aid Specialists and Opticians (“the Board”) seeks to amend its current Hearing Aid Specialists regulations (“regulations”) to adjust its licensing fee structure. The Board must establish fees adequate to support the costs of the Board operations and a proportionate share of the Department’s operations. Currently, fees do not provide adequate revenue for those costs.

The Department of Professional and Occupational Regulation (DPOR) is funded entirely from revenue collected for license applications, renewal, examination fees, and other licensing fees and receives no general fund money. DPOR is self-supporting and must collect adequate revenue to support its mandated and approved activities and operations. Fee revenue collected on behalf of the various boards funds the Department’s authorized special revenue appropriation.

The Board has no other source of revenue from which to fund its operations.

Acronyms and Definitions

Define all acronyms used in this form, and any technical terms that are not also defined in the “Definitions” section of the regulation.

Department” means the Department of Professional and Occupational Regulation.

“Board” means the Board for Hearing Aid Specialists and Opticians.

Statement of Final Agency Action

Provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.

At its meeting August 17, 2022, the Board for Hearing Aid Specialists and Opticians adopted as final regulations that amend the fees in the Hearing Aid Specialists Regulations (18 VAC 80 – 20).

Mandate and Impetus

List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding the mandate for this regulatory change, and any other impetus that specifically prompted its initiation. If there are no changes to previously reported information, include a specific statement to that effect.

The proposed regulatory action is mandated by the following sections of the Code of Virginia. To comply with these statutes, the Board evaluates its current and projected financial position, and determines the type of fees and amounts to be established for each fee that will provide revenue sufficient to cover its expenses.

§ 54.1-113 (Callahan Act) 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.

§ 54.1-201.4 describes each regulatory board’s power and duty to “levy and collect fees for the certification or licensure and renewal that are sufficient to cover all expenses for the administration and operation of the regulatory board and a proportionate share of the expenses of the Department...”

§ 54.1-304.3 describes the power and duty of the Director to “collect and account for all fees prescribed to be paid into each board and account for and deposit the moneys so collected into a special fund from which the expenses of the Board, regulatory boards, and the Department shall be paid...”

§ 54.1-308 provides for compensation of the Director, employees, and board members to be paid out of the total funds collected. This section also requires the Director to maintain a separate account for each board showing moneys collected on its behalf and expenses allocated to the board.

These Code sections require the Department to:

- pay expenses of each board and the Department from revenues collected;
- establish fees adequate to provide sufficient revenue to pay expenses;
- account for the revenues collected and expenses charged to each board; and
- revise fees as necessary to ensure that revenue is sufficient but not excessive to cover all expenses.

To comply with these requirements, the Department:

- Accounts for the revenue collected for each board distinctly;
- Accounts for direct board expenses for each board, and allocates a proportionate share of agency operating expenses to each board;
- Reviews the actual and projected financial position of each board biennially to determine whether revenues are adequate, but not excessive, to cover reasonable and authorized expenses for upcoming operating cycles; and
- Recommends adjustments to fees to respond to changes and projections in revenue trends and operating expenses. If projected revenue collections are expected to be more than sufficient to cover expenses for upcoming operating cycles, decreases in fees are recommended. If projected revenue collections are expected to be inadequate to cover operating expenses for upcoming operating cycles, increases in fees are recommended.

Fee adjustments are mandatory in accordance with these Code sections. The Board exercises discretion on how the fees are adjusted by determining the amount of adjustment for each type of fee. The Board makes its determination based on the adequacy of the fees to provide sufficient revenue for upcoming operating cycles.

In 2014, the Board initiated a fee change for Hearing Aid Specialists in anticipation that the change would be needed to maintain Callahan Act required balances. In 2016, at the request of the Governor, the Board reassessed its financial position and determined the fee increase was still needed. Following that decision, the fee increase remained in the final stage, in the Secretary of Commerce and Trade’s office for review, until December 2018. In the meantime, the Department was subject to a review by the Joint Legislative Audit and Review Commission (JLARC) in 2018. In its report, JLARC stated “DPOR should revise the fee change using more realistic expense projections... If, however, DPOR determines that the fee change is not needed in the near term, the fee change could be withdrawn.” After the JLARC report was issued, DPOR reassessed the expense projections and advised that while a fee change was still necessary, the proposed fees should be modified.

With the effective date for new fees anticipated to be in FY2023, it will have been 18 years since fees for Hearing Aid Specialists were decreased significantly to allow the Board to spend down

its accumulated cash balance. At that time it was anticipated that fees would increase in approximately six years. The Department generally tries to structure fees so that they will cover the Board’s expenses for a period of 4- 8 years and that revenues are adequate to cover operating expenses but are not excessive. It is generally anticipated that each board would need to reassess its fee structure and raise fees in response to ongoing cost increases about every 5-6 years. One-time costs or unusual cost increases may shorten that time period.

The Department is always concerned about efficiency of operations as a means of maintaining or reducing costs, and has implemented budget review, approval, and monitoring processes, and performance measurement to monitor targets and goals.

While cost increases are not the sole reason for the fee increases, some cost categories have increased significantly since this Board’s last fee adjustment. Examples of increased costs from FY2005 to FY2018 include Information Technology which increased 159%, Building Rent which increased 82% and staff expenses which increased 80%.

Legal Basis

Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia and Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency’s overall regulatory authority.

- 1) Board for Hearing Aid Specialists and Opticians.
- 2) § 54.1-113 (Callahan Act) requires regulatory boards to periodically review and adjust fees.
 - § 54.1-201.4 provides the authority to regulatory boards to levy and collect fees.
 - § 54.1-304.3 describes the authority of DPOR to collect and account for fees.
 - § 54.1-308 requires costs to be paid by regulatory boards.

All of these provisions of the Code of Virginia are mandatory.

Purpose

Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety, or welfare of citizens, and (3) the goals of the regulatory change and the problems it is intended to solve.

The Board must establish fees adequate to support the costs of the Board operations and a proportionate share of the Department’s operations. Current fees do not provide adequate revenue for those costs.

The Department of Professional and Occupational Regulation (DPOR) is funded entirely from revenue collected for license applications, renewal, examination fees, and other licensing fees and receives no general fund money. DPOR is self-supporting and must collect adequate revenue to support its mandated and approved activities and operations. Fee revenue collected

on behalf of the various boards funds the Department’s authorized special revenue appropriation.

The Board has no other source of revenue from which to fund its operations.

Substance

Briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the “Detail of Changes” section below.

The Board reviewed the fees listed in 18 VAC 80-20-70, and based on projected revenues and expenses, developed a fee schedule that meets the requirements of the applicable statutes while being the least burdensome to the regulant population.

The following is the expected range of the proposed fee increases to be made in this regulatory action.

Range of Fees:

Fee Type		Current Fee	New Fee
New Applicant	Hearing Aid Specialist	30	125
New Applicant Temporary Permit	Hearing Aid Specialist	30	125
Renewal	Hearing Aid Specialist	20	125
Reinstatement	Hearing Aid Specialist	20	125

Issues

Identify the issues associated with the regulatory change, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary 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, include a specific statement to that effect.

The Code of Virginia establishes the Board as the state agency that oversees licensure of hearing aid specialists providing services in Virginia. The Board’s primary mission is to protect the citizens of the Commonwealth by prescribing requirements for minimal competencies; by prescribing standards of conduct and practice; and by imposing penalties for not complying with the regulations. Further, the Code of Virginia requires the Department to comply with the Callahan Act. The proposed fee adjustments will ensure that the Board has sufficient revenues to fund its operating expenses. Over the previous biennium, the Board had a -\$44,536 balance, with a negative 19.6% Callahan act percentage.

The advantages of this change to the public is that the Board will continue to be financially solvent. There are no disadvantages to the public or the Commonwealth in raising the Board's fees as proposed here.

Requirements More Restrictive than Federal

List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any requirement of the regulatory change which is more restrictive than applicable federal requirements. If there are no changes to previously reported information, include a specific statement to that effect.

No federal requirements have been identified.

Agencies, Localities, and Other Entities Particularly Affected

List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any other state agencies, localities, or other entities that are particularly affected by the regulatory change. If there are no changes to previously reported information, include a specific statement to that effect.

Other State Agencies Particularly Affected

There are no other state agencies impacted by this change.

Localities Particularly Affected

There are no localities particularly impacted by this change.

Other Entities Particularly Affected

There are no other entities impacted by this change.

Public Comment

Summarize all comments received during the public comment period following the publication of the previous stage, and provide the agency's response. Include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. If no comment was received, enter a specific statement to that effect.

During the public comment period, the Board received no comments.

Detail of Changes Made Since the Previous Stage

List all changes made to the text since the previous stage was published in the Virginia Register of Regulations and the rationale for the changes. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and

*what is being proposed in this regulatory change. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. * Put an asterisk next to any substantive changes.*

No changes since previous stage.

Detail of All Changes Proposed in this Regulatory Action

*List all changes proposed in this action and the rationale for the changes. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. * Put an asterisk next to any substantive changes.*

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of updated requirements
18VAC80-20-70		<p>The new applicant fee is \$30.</p> <p>The new applicant by reciprocity fee is \$30.</p> <p>The new applicant temporary permit fee is \$30.</p> <p>The renewal fee is \$20.</p> <p>The reinstatement fee is \$50</p>	<p>The new application fee is increased from \$30 to \$125 to facilitate compliance with the Callahan Act.</p> <p>The new application by reciprocity fee is increased from \$30 to \$125 to facilitate compliance with the Callahan Act.</p> <p>The new application temporary permit fee is increased from \$30 to \$125 to facilitate compliance with the Callahan Act.</p> <p>The renewal fee is increased from \$20 to \$125 to facilitate compliance with the Callahan Act.</p> <p>The reinstatement fee is increased from \$50 to \$125 to facilitate compliance with the Callahan Act.</p>