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## Re-Proposed Regulation Agency Background Document

<b>Agency name</b>	Board of Long-Term Care Administrators, Department of Health Professions
<b>Virginia Administrative Code (VAC) citation</b>	18VAC95-20-10 et seq. 18VAC95-30-10 et seq.
<b>Regulation title</b>	Regulations Governing the Practice of Nursing Home Administrators Regulations Governing the Practice of Assisted Living Facility Administrators
<b>Action title</b>	Increase in fees
<b>Date this document prepared</b>	6/19/12

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Brief summary

*In a short paragraph, please summarize all substantive provisions of new regulations or changes to existing regulations that are being proposed in this regulatory action.*

The Board of Long-Term Care Administrators is proposing amendments to increase fees charged to regulants and applicants. Annual renewal fees would be increased as follows: 1) For nursing home and assisted living facility administrators, the increase is \$90 per year from \$225 to \$315; and 2) For preceptors, the increase is \$15 per year to \$65. Other fees set proportionally to the renewal fees would also be increased. An application fee (which includes initial licensure) would be increased from \$200 to \$315. There is a new fee of \$1,000 proposed for reinstatement after disciplinary action to partially cover the costs of an investigation and a hearing for reinstatement of licensure.

**On June 19, 2012, the Board re-proposed the regulatory action to eliminate the two-step increase in which fees would increase again in FY14.**

**Acronyms and Definitions**

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.

There are no acronyms used in this document.

**Legal basis**

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

18VAC95-20-10 et seq., Regulations Governing the Practice of Nursing Home Administrators and 18VAC95-30-10 et seq., Regulations Governing the Practice of Assisted Living Facility 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 amended regulation is mandated by § 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.*

## Purpose

*Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal, the environmental benefits, and the problems the proposal is intended to solve.*

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The issue to be addressed is the need of the Board of Long-Term Care Administrators to increase its fees to cover expenses for essential functions of licensing, investigation of complaints against licensees, and adjudication of disciplinary cases to protect the health and safety of a very vulnerable population who receive services in long-term care facilities in the Commonwealth.

§ 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. In the FY09 fiscal year, the board collected biennial renewal fees, resulting in a balance of \$16,929. However, in FY10, allocated and direct expenditures and the cash transfers to the General Fund totaled \$470,144 and revenue totaled \$354,270, resulting in a shortfall of (\$98,946) by June 30, 2010. With current fees, the shortfall in the Board's budget is projected to increase to (\$609,645) by FY14. With a small pool of licensees (approximately 798 nursing home administrators and 590 assisted living administrators), it is very difficult to have sufficient revenue to eliminate a shortfall and have adequate revenue for future budgets.

In FY05 when the contract for information technology services was signed, placing all IT hardware, software and services under a contract with Northrop-Grumman through the Virginia Information Technology Agency (VITA), DHP costs for IT services was \$850,000. In FY11, the cost for those services was \$3.6 million, and in FY12, the allocated data budget for the Long Term Care Board \$126,416 (which is \$91 per year for each licensed nursing home administrator and assisted living administrator). Since the Department and its boards are under the VITA contract, the agency has no other options for information technology.

Additionally, some of the Department's non-general funds were transferred, in accordance with the Budget Bill of 2010, to the General Fund to help close the gap between revenue and expenditures. The share of that cash transfer allocated to the Board of Long-Term Care Administrators was \$17,997.

While the board only spent 87% of its direct budget for FY10, the allocated expenditures were 204% over budget. The VITA expenditures and cash transfers account for some of that overage, but the enforcement and adjudication cost were also over budget due to a significant increase in the disciplinary caseload. The investigative costs were 497% over budget and the adjudication costs were 369% over budget. In FY09, there were 21 nursing home cases and 4 assisted living cases; in FY10, there were 36 nursing home cases and 27 assisted living cases. Consequently, the Board is working with Enforcement and Administrative Proceedings to develop alternative methods for managing the caseload with the intent of reducing the number of investigative hours and streamlining the preparing of documentation.

Since the fees from licensees no longer generate sufficient funds to pay operating expenses for the board, adoption of a fee increase is essential to continue licensing, investigating and disciplining long-term care administrators.

## Substance

*Please briefly identify and explain new substantive provisions (for new regulations), substantive changes to existing sections or both where appropriate. (More detail about all provisions or changes is requested in the "Detail of changes" section.)*

The Board of Long-Term Care Administrators is proposing amendments to increase fees charged to regulants and applicants. Annual renewal fees for FY12 would be increased as follows: 1) For nursing home and assisted living facility administrators, the increase is \$90 per year from \$225 to \$315; and 2) For preceptors, the increase is \$15 per year to \$65. Other fees set proportionally to the renewal fees would also be increased. An application fee (which includes initial licensure) would be increased from \$200 to \$315. There is a new fee of \$1,000 proposed for reinstatement after disciplinary action to partially cover the costs of an investigation and a hearing for reinstatement of licensure.

## Issues

*Please identify the issues associated with the proposed regulatory action, 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.*

- 1) The primary advantage to the public would be that increased fees will produce adequate revenue to fund the licensing and disciplinary activities of the board. With the **shortfall** at (\$98,946) at the end of FY10 and projected to increase to (\$951,192) in FY16, there could be significant delays in licensing new administrators, approving administrator-in-training programs and in the investigation and adjudication of complaints against licensees. There are no disadvantages; increases in annual renewal fees of \$90 should not impact the cost of long term care for Virginians.
- 2) There are no disadvantages to the agency; the advantage would be that fees would be sufficient to cover expenditures, which is a requirement of the Code of Virginia.
- 3) There are no additional issues.

## Requirements more restrictive than federal

*Please identify and describe any requirement of the proposal, which are more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.*

There are no applicable federal requirements.

### Localities particularly affected

*Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.*

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There are no localities particularly affected.

### Public participation

*Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulated community.*

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In addition to any other comments, the board/agency is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the agency/board is seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit comments may do so via the Regulatory Townhall website , [www.townhall.virginia.gov](http://www.townhall.virginia.gov), or by mail, email or fax to Elaine Yeatts, Agency Regulatory Coordinator, 9960 Mayland Drive, Henrico, VA 23233 or [elaine.yeatts@dhp.virginia.gov](mailto:elaine.yeatts@dhp.virginia.gov) or by fax to (804) 527-4434. Written comments must include the name and address of the commenter. In order to be considered comments must be received by the last day of the public comment period.

A public hearing will be held and notice of the public hearing may appear on the Virginia Regulatory Town Hall website ([www.townhall.virginia.gov](http://www.townhall.virginia.gov)) and the Commonwealth Calendar. Both oral and written comments may be submitted at that time.

### Economic impact

*Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact.*

<p><b>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source, and (b) a delineation of one-time versus on-going expenditures.</b></p>	<p>a) As a special fund agency, the Board must generate sufficient revenue to cover its expenditures from non-general funds, specifically the renewal and application fees it charges to practitioners for necessary functions of regulation; b) The agency will incur some one-time costs (less than \$1,000) for mailings to the Public Participation Guidelines mailing lists, conducting a public hearing, and sending notice of final regulations to regulated entities. Every effort will be made to incorporate those into anticipated mailings and Board meetings already scheduled. There are no additional on-going costs to the state relating to these regulations.</p>										
<p><b>Projected cost of the <i>new regulations or changes to existing regulations</i> on localities.</b></p>	<p>There are no costs to localities.</p>										
<p><b>Description of the individuals, businesses or other entities likely to be affected by the <i>new regulations or changes to existing regulations</i>.</b></p>	<p>The entities that are likely to be affected by these amendments would be applicants, licensed nursing home administrators, licensed assisted living facility administrators, preceptors and persons enrolled in an administrator-in-training program.</p>										
<p><b>Agency's best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected.</b> Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<table border="0"> <tr> <td>Nursing home administrators</td> <td>798</td> </tr> <tr> <td>Assisted living administrators</td> <td>590</td> </tr> <tr> <td>Applicants for licensure – approximately</td> <td>95</td> </tr> <tr> <td>Preceptors</td> <td>379</td> </tr> <tr> <td>Administrators-in-training</td> <td>150</td> </tr> </table> <p>Most administrators are employed by small businesses or non-profit corporations, although there are some large corporate practices that operate nursing homes and assisted living facilities.</p>	Nursing home administrators	798	Assisted living administrators	590	Applicants for licensure – approximately	95	Preceptors	379	Administrators-in-training	150
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<p><b>All projected costs of the <i>new regulations or changes to existing regulations</i> for affected individuals, businesses, or other entities. Please be specific and do include all costs. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses. Specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.</b></p>	<p>The costs of amended regulations would primarily be the increase in renewal fees:          For administrators, the increase is \$90 per year.          For administrators-in-training (AIT), the increase for an application is \$30.          For preceptors of AIT programs, the increase is \$15.          Other fees are increased proportionally.</p>										
<p><b>Beneficial impact the regulation is designed to produce.</b></p>	<p>The agency should have sufficient funding to carry out its statutory responsibilities of licensing, investigations and disciplinary proceedings.</p>										

**Alternatives**

*Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include*

*discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.*

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The Department of Health Professions could consider two possible solutions to the deficit of the Board of Long-Term Care Administrators; they 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 consumers 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.

Current fees have resulted in a cash balance of (\$215,920) as of June 30, 2011; without any increase in fees the cash balance is projected to be (\$609,645) by FY14. Without the incremental increase in FY14 as proposed initially, the projected cash balance **(with the re-proposed fee increase)** is projected to be (\$462,565).

If the Board of Long-Term Care Administrators was independent and not located within the Department of Health Professions, it would currently be out of business and unable to license administrators and investigate complaints as required by law.

### **2. Reduce department/board operations and staff and remain at current fee level.**

In order to prevent deficit spending, the department would 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

Delays in licensing and investigation could place the a vulnerable population in Virginia nursing homes and assisted living facilities at health risk as administrators who should not be practicing would continue to practice and supply of new licensees needed 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.

To mitigate the rising costs of information technology and enforcement, the following steps have been taken:

- Direct expenditures of the board examined for possible reductions
- Meetings with Enforcement to initiate streamlined investigations and tighter case management

- Efforts to reduce the hours in production of documents by Administrative Proceedings
- Meetings with the Cabinet Secretary, the CEO of VITA and others in efforts to reduce charges associated in information technology.

**Regulatory flexibility analysis**

*Please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.*

There are no alternative regulatory methods. Because of delays in approval of the action initially adopted in 2010, the proposed fees will not be sufficient to cover the accumulated deficit and have adequate revenue for on-going expenditures.

**Public comment**

*Please summarize all comments received during public comment period following the publication of the NOIRA, and provide the agency response.*

The Notice of Intended Regulatory Action was published on August 16, 2010 and sent to interested parties on the board’s Public Participation Guidelines list.

<b>Commenter</b>	<b>Comment</b>	<b>Agency response</b>
Dana Parsons Va. Association of Non-profit Homes for Adults (VANHA)	Due to challenging economic times, VANHA cannot support a fee increase	Since the board is funded solely by fees from licensees and its costs related to data and enforcement have dramatically increased, there is no acceptable alternative to a fee increase.
Judy Hackler Va. Assisted Living Association (VALA)	Without knowing the actual fee amounts and background calculations used to determine fees, VALA opposes any increase.	Since the board is funded solely by fees from licensees and its costs related to data and enforcement have dramatically increased, there is no acceptable alternative to a fee increase.

**Family impact**

*Please assess the 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.*



There is no impact on the family or family stability.

**Detail of changes**

*Please detail all changes that are being proposed and the consequences of the proposed changes. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact if implemented in each section. Please detail the difference between the requirements of the new provisions and the current practice or if applicable, the requirements of other existing regulations in place.*

*If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all provisions of the new regulation or changes to existing regulations between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.*

Current section number	Current and Proposed change, rationale, and consequences	
Chapter 20, Section 80 A	Changes to Nursing home regulations	
	1. A.I.T. program application	\$185 <u>\$215</u>
	2. Preceptor application	\$50 <u>\$65</u>
	3. Licensure application	\$200 <u>\$315</u>
	4. Verification of licensure requests from other states	\$25 <u>\$35</u>
	5. Nursing home administrator license renewal	\$225 <u>\$315</u>
	6. Preceptor renewal	\$50 <u>\$65</u>
	7. Penalty for nursing home administrator late renewal	\$65 <u>\$110</u>
	8. Penalty for preceptor late renewal	\$20 <u>\$25</u>
	9. Nursing home administrator reinstatement	\$315 <u>\$435</u>
	10. Preceptor reinstatement	\$95 <u>\$105</u>
	11. Duplicate license	\$15 <u>\$25</u>
	12. Duplicate wall certificates	\$25 <u>\$40</u>
	13. Reinstatement after disciplinary action	<u>\$1,000</u>

*The rationale for the fee increases is stated in the Purpose section above. Application, late, and reinstatement are based on the renewal fee, which provides the vast majority of revenue for boards and the Department. As the renewal fee is increased, other fees are increased accordingly. Fees for administrative services, such as provision of a duplicate license or wall certification or verification of licensure to another state are based on costs (staff time, data, postage, etc.) for such services.*

Current section number	Current and Proposed change, rationale, and consequences	
Chapter 30,	Changes to Assisted living regulations	

Section 40 A		
	1. ALF AIT program application	<del>\$185</del> <u>\$215</u>
	2. Preceptor application	<del>\$50</del> <u>\$65</u>
	3. Licensure application	<del>\$200</del> <u>\$315</u>
	4. Verification of licensure requests from other states	<del>\$25</del> <u>\$35</u>
	5. Assisted living facility administrator license renewal	<del>\$225</del> <u>\$315</u>
	6. Preceptor renewal	<del>\$50</del> <u>\$65</u>
	7. Penalty for assisted living facility administrator late renewal	<del>\$65</del> <u>\$110</u>
	8. Penalty for preceptor late renewal	<del>\$20</del> <u>\$25</u>
	9. Assisted living facility administrator reinstatement	<del>\$315</del> <u>\$435</u>
	10. Preceptor reinstatement	<del>\$95</del> <u>\$105</u>
	11. Duplicate license	<del>\$15</del> <u>\$25</u>
	12. Duplicate wall certificates	<del>\$25</del> <u>\$40</u>
	13. Returned check	<del>\$35</del>
	<u>14. Reinstatement after disciplinary action</u>	<u>\$1,000</u>

*The rationale for the fee increases is stated above.*