



Virginia
Regulatory
Town Hall

Notice of Intended Regulatory Action Agency Background Document

Agency Name:	Board of Audiology & Speech-Language Pathology, Department of Health Professions
VAC Chapter Number:	18 VAC 30-20-10 et seq.
Regulation Title:	Regulations Governing the Practice of Audiology & Speech-Language Pathology
Action Title:	Increase in fees
Date:	

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 Audiology & Speech-Language Pathology to increase their fees to cover expenses for essential functions of the approving applicants for licensure, 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 Audiology & Speech-Language Pathology, a deficit (\$80,387) has been reported. The total budget for FY03, including direct and allocated expenditures is \$228,232, but revenues are projected to be only \$182,435. That combined with the carry-over debt of the Board will result in a projected deficit of (\$126,184) by June 30, 2003. Since licensees of the Board renew biennially in even years, there will not be another renewal date until December 2004, so the estimated income for the Board for FY04 is only \$16,285. Expenditures for FY04 are estimated to be \$215,264, resulting in an estimated deficit by June 30, 2004 of (\$325,164).

§ 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. By the close of the 2000-2002 biennium, the Board of Audiology & Speech-Language Pathology has a deficit, and it is projected that the Board will continue to have a larger deficit through the next biennium. Since the fees from licensees will no longer generate sufficient funds to pay operating expenses 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 2004, it is necessary to begin the promulgation of amendments to regulations.

In addition, the Board intends to add a fee for approval of a continuing education provider. The process for approving a CE provider entails submission of an application with documentation on the courses, instructors and objectives. Each application must be reviewed by staff for completeness, and staff time is often taken with securing follow-up information. Application packages must be copied and provided to members of the continuing education committee for their review and approval. Those members are entitled to per diem for the time spent in review. If there is no agreement among members of the committee or if the provider disputes the decision of the committee, a special conference committee must be convened to hear the case. That would necessitate expenditures related to bringing board members to Richmond or hearing the case in venue.

No preliminary regulatory language has been developed; the agency will develop alternative fee structures that will address the deficit in funding for the Board to consider in its adoption of proposed regulations, including returning from a biennial to an annual renewal. 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 30-20-10 et seq. Regulations Governing the Practice of Audiology & Speech-Language Pathology 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. Since the Board had accumulated a surplus from prior years, it has been able to avoid a fee increase up until now. In the '98-'00 biennium, the Board took in \$190,121 in revenue and expended \$257,398. In the '00-'02 biennium, the Board had \$190,815 in revenue and expenses of \$335,455. Cash balance by June 30, 2002 was (\$80,387).

Renewal Fees and Consumer Price Index (CPI) Adjustments

During the past decade, the CPI has increased approximately 37 percent while fees for audiologists and speech-language pathologists in Virginia ***have decreased*** since 1994.

History of renewal Fees for regulants of the Board of Audiology & Speech-Language Pathology

Occupation	Current fee	1998	1996-97*	1994
Speech-language pathologists	\$60/biennium	\$60/biennium	\$30/annual	\$55/annual
Audiologists	\$60/biennium	\$60/biennium	\$30/annual	\$55/annual

*In 1996 only, the Board reduced the renewal fee to \$20 per year, and it was set at \$30 per year thereafter. Fees were reduced in compliance with § 54.1-113 in order to reduce an accumulated surplus and to set fees that did not exceed expenditures by more than 10% of the budget.

Comparison of renewal fees in other states

Virginia has the lowest renewal fee of any of its neighboring states.

In Maryland, the biennial renewal is \$150; in South Carolina, the biennial renewal fee is \$220; in West Virginia, the biennial renewal is \$150; in Kentucky, the annual renewal fee is \$50; in North Carolina, the annual renewal fee is \$40; and in Tennessee, the biennial renewal fee is \$80.

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, the health practitioner intervention program, and the establishment of a requirement for continuing education. Fee increases for licensees regulated by the Board of are necessary in order for the Board and the Department to continue performing essential functions of approving applicants for licensure and of protecting the public from continued practice by incompetent or unethical practitioners.

Renewal Schedule

Audiologists and speech-language pathologists licensed by the Board currently renew their licenses every even year by December 31st. The intent of the Board is to adopt an annual renewal in order to lessen the impact of the increase and to have a more steady income stream with which to budget. Therefore, it is essential to have an increased fee in place by November of 2003 to begin annual renewals by December 31st of 2003 and prevent a deficit from increasing significantly over the next two years.

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 Audiology & Speech-Language Pathology 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 nursing home administrators 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.