

**PRELIMINARY DETERMINATION
NOTICE OF INTENDED REGULATORY ACTION**

***DEPARTMENT OF HEALTH PROFESSIONS
BOARD OF NURSING***

18 VAC 90-50-10 et seq.

ITEM 1: LEGAL AUTHORITY THE REGULATION

18 VAC 90-50-10 et seq. Regulations Governing the Certification of Massage Therapists is 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 Nursing to increase their fees to cover expenses for essential functions of licensing, investigation of complaints against nurses and nurse

aides, adjudication of disciplinary cases, and the review and approval of nursing education programs.

A Notice of Intended Regulatory Action was published on April 12, 1999 for amendments to fees in 18 VAC 90-20-10 et seq. The Board has already adopted proposed regulations which amend fees for registered nurses, licensed practical nurses and certified nurse aides. The budget for the Board of Nursing also includes fees for certification and renewal of massage therapists, so 18 VAC 90-50-10 et seq. must also be amended in order to achieve the resolution of the deficit in the board’s budget.

In its analysis of the funding under the current fee structure for programs under the Board of Nursing, the following deficits have been projected:

<u>FY Ending</u>	<u>Board</u>	<u>Amount</u>	<u>Percent</u>
6/30/00	Nursing	-\$1,299,307	-17.4%
6/30/02	Nursing	-\$4,615,498	-50.5%

§ 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. Since the fees from licensees no longer generate sufficient funds to pay operating expenses for the Board, consideration of a fee increase is essential.

The preliminary language which has been developed would incorporate fees for certified massage therapists consistent with those for other entities regulated by the Board and consistent with the Principles for Fee Development from the Department. Following the alternative for fees adopted by the Board at its meeting on May 13, 1999, the amendments would be as attached.

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. The biennial renewal fee for the nurse practitioners is \$30 and **has not been changed since 1989.**

Renewal Fees and Consumer Price Index (CPI) Adjustments 1990 - 1999

During the period 1990 – 1999, **the CPI has increased approximately 39 percent while health professional renewal fees in Virginia have increased on average 17 percent.**

Biennial Renewal Fees for regulants of the Board of Nursing

Occupation	Current fee	FY ‘98	FY ‘96
Registered nurse	\$40	\$40	\$40
Lic. practical nurse	\$40	\$40	\$40

Nurse practitioner	\$30	\$30	\$30
Clinical nurse spec.	\$30	\$30	\$30
Massage Therapist	\$50	\$50	n/a

Renewal Schedule

All persons regulated by the Board of Nursing renew their licenses or certificates biennially in their birth month in an odd or even year, depending on birth year. In other words, renewals are continuously and the sooner the fees can be increased, the sooner deficits will be addressed. If deficits are allowed to accumulate, additional fee increases will be needed in the near future to keep up with current expenditures.

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.)

Fee increases for all categories of licensees regulated by the Board of Nursing are necessary in order for the Board and the Department to continue performing essential functions of licensing new nurses and of protecting the public from continued practice by incompetent or unethical nurses.

ITEM 4: ALTERNATIVES CONSIDERED

The department considered **three** possible solutions to the deficits in the Board of Nursing.

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 overall costs of health care. The cost of operation of regulatory boards (\$12.5 million 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 affect 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 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**
- **Inspections and educational program approvals**

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