

REGISTRAR'S SUBMISSION PACKAGE

BOARD OF NURSING

18 VAC 90-20-10 et seq.

Regulations Governing the Practice of Nursing

Analysis of Proposed Amendments to Regulation

1. Basis of Regulation:

Chapter 24 of Title 54.1 of the Code of Virginia 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.

2. Statement of Purpose:

The purpose of the proposed amendments is to establish fees sufficient to cover the administrative and disciplinary activities of the Board of Nursing. Without adequate funding, the approval of nursing education programs and the licensing of nurses and registration of certified nurse aides could be delayed. In addition, sufficient funding is essential to carry out the investigative and disciplinary activities of the Board in order to protect the public health, safety and welfare.

3. Substance of Regulations:

18 VAC 90-20-30. Fees.

Fees are amended as follows:

- Fees for application for licensure have increased from \$25 to \$105 for registered nurses and licensed practical nurses and now include \$25 for application processing and credential review, the cost of a biennial renewal and license (\$70), and the cost of the wall certificate.
- A new fee of \$25 is proposed for processing another application and re-review of an applicant's credentials, if the application process and passage of the examination has not been completed within six months.

- The proposed biennial renewal fee increases from \$40 to \$70 and reflects the cost of the administrative and disciplinary activities of the Board of Nursing and the allocated costs of the Department.
- Currently, anyone who does not renew his license by the due date must be “reinstated” at a cost of \$50, regardless of the amount of time the license was expired. Proposed regulations would establish a late fee of \$25 for anyone who renews the expired license within the biennium (approximately 35% of the biennial renewal). If the license is allowed to lapse beyond the biennium, it would require reinstatement with an application review fee and payment of the late fee and biennial renewal fee for a combined total of \$120. For reinstatement following suspension or revocation, the applicant would pay an additional \$40 to help offset the additional disciplinary cost for a reinstatement hearing.
- The cost for producing and sending a duplicate license has been reduced, so the proposed fee decreases from \$15 to \$5 and reflects the actual cost.
- A fee for replacing a wall certificate is currently being paid by the person making the request directly to the vendor. The proposed fee of \$15 would make the process and fee uniform for all boards within the Department.
- The cost of verifying a license to another jurisdiction or sending all or part of a transcript is estimated to be \$25, so the proposed fees of \$25 for either activity reflects those costs.
- The proposed fee of \$25 is estimated to be the actual administrative costs for processing and collecting on a returned check; it is proposed to be the same fee for all boards within the Department.
- The fee for licensure of a clinical nurse specialist would include \$25 for application processing and credential review, the cost of the biennial renewal for the license and \$10 for a wall certificate.
- The biennial renewal fee for a clinical nurse specialist is determined by the estimated administrative and disciplinary costs of the Board and allocated costs of the Department.
- Reinstatement of a clinical nurse specialist registration would be set at \$105 and would necessitate an application processing and credential review fee, payment of the late renewal fee and cost of a biennial license.
- The actual cost of verification of a clinical nurse specialist registration to another jurisdiction is estimated to be \$25, so there is no change proposed.

- The penalty for late renewal of a CNS registration is proposed to \$20 or 30% of the biennial renewal.

18 VAC 90-20-190. Licensure by examination.

An amendment is proposed to clarify that the “fee” referred to in subsection C 3 and in subsection H 2 is the “reapplication” fee of \$25.

18 VAC 90-20-230. Reinstatement of licenses.

Amendments are proposed to conform the policies on reinstatement of the Board of Nursing to those in the “Principles for Fee Development” for all boards within the Department. Under the current rule, anyone who is late renewing his license (even by one day) would pay the current renewal fee and a reinstatement fee of \$50. The proposed rule requires a person who wants to renew an expired license within one renewal cycle to pay a late fee of \$25 and the current renewal fee. Beyond the biennium, the lapsed license could be reinstated by submission of a reinstatement application and payment of a reinstatement fee.

The board also proposes a higher fee for reinstatement of a license which has been suspended or revoked to recover some of the costs for holding a hearing of the board.

18 VAC 90-20-350. Nurse aide registry.

The proposed renewal fee for a certified nurse aide would increase from \$30 to \$45 per biennium; the charge for a returned check is increased from \$15 to \$25.

4. Issues of the Regulations

Prior to consideration of amendments to regulations by the Board of Nursing, the Department of Health Professions set forth a set of principles by which all boards would be guided in the development of regulations. The “Principles for Fee Development” are intended to provide structure, consistency, and equity for all professionals regulated within the Department. In consideration of various alternatives and issues surrounding the adoption of fees, the Principles served to guide the Board in the development of an appropriate and necessary fee.

ISSUE 1: Proration of initial licensure fees based on timing within the renewal cycle an applicant is initially licensed.

It is unknown at the time of application for initial licensure when or if the applicant will qualify. Applicants may be delayed or ineligible because they fail to subsequently submit required information (such as transcripts or verification from other states), do not meet substantive requirements (education, experience, moral character, etc.) or fail to pass an examination. While most candidates are eventually found eligible, it is impossible to predict when or if any given candidate will be licensed.

Therefore, in order to prorate an initial 'license fee' for the current period of licensure it would require the assessment, after the determination of eligibility, of each newly qualified candidate (estimated to be 5880 per year, including licensure by examination and endorsement). To accomplish this, the Department would need to incur a cost to program automated systems to generate assessments in various occupational categories. In addition to generating the assessment, the agency will be required to receive and account for the additional payment. This task could possibly be contracted out, as we do with a number of lock box transactions. All exceptions to lock box transactions however, are handled in-house, which is an activity that would result in additional administrative costs.

Prorating of fees would have negative impact on prompt licensing of nurses. It is likely that it would add a minimum of 14 days and likely average 21 days to the time it will take to issue a license after approval (the period to generate an assessment, mailing out, writing of a check, return mail, and accounting for the fee). In many cases a candidate is legally prohibited from employment until the license is in hand. Therefore, the equity that may be achieved by prorating fees will not be of sufficient value to lead to its implementation. During the two to three weeks of delay, the applicant could have been working with a license issued promptly upon approval by the Board. The additional income earned during that period would far exceed the small amount of the initial licensure fee that might have been saved by a system of proration.

In the proposed regulations, all applicants for a nursing license would be licensed for a full two years once eligibility has been determined. Since nurses renew biennially in their birth month, some applicants may receive more than two years, but no one would receive less than the equivalent of a biennial renewal, which is the amount calculated for initial licensure in the application fee.

Advantages and disadvantages to the licensees

As is stated above, the advantage of not prorating fees is that initial licensure can occur in a more timely manner. For those who are applying for licensure by examination, the license is issued as soon as examination results are forwarded to the board, usually within one or two working days. For those applying for licensure by endorsement, a license is typically issued within one or two days of receipt of all verifying documentation. All newly licensed nurses receive at least a full biennial renewal cycle, so there is no advantage to prorating the initial licensure fee.

ISSUE 2. Establishment of application and initial licensure fee for licensure by examination versus licensure by endorsement.

In accordance with "Principles for Fee Development", the initial application and licensure fee should be based on: 1) the cost to the Board for application processing and credential review; 2) the examination costs, when paid by the board; 3) an appropriate

portion of the license fee (renewal cost) relative to the period that the initial license will be issued prior to the first renewal; 4) cost of preparation and mailing a wall certificate; and 5) any other activity unique to and directly associated with initial licensure. Based on those Principles, the application and licensure fee for licensure by examination and by endorsement should be identical. There is a similar amount of time spent in application processing and credential review, and there are no examination costs paid by the board. Candidates pay those costs directly to the examination services. Therefore, the application fee, which is currently \$25 for licensure by examination and \$50 for licensure by endorsement, would be identical in the proposed regulations.

Currently, newly licensed nurses pay only the costs of application processing and review. They receive their first biennial license and their wall certificate at no cost. Following the Principles, the policy of the Board, as reflected in proposed regulation, would be to include those costs in the initial application fee. Also, current regulations require a new application if the applicant does not complete the process and pass the examination within six months. Following the Principles, the re-application fee should be the amount necessary to cover costs for application processing and review (\$25), but should not include the licensure fee and the fee for a certificate because those amounts were already included in the initial application fee.

Advantages and disadvantages to the licensees

For applicants for licensure, there is a disadvantage to the proposed regulation since the initial licensure and wall certificate fee would now be included in the application fee. Costs associated with that initial licensure are currently being borne by nurses in their renewal fee. Therefore, it would be more equitable for newly licensed nurses receiving the benefit of a license for a two-year period to pay the cost of that license.

For applicants for licensure by endorsement, the current application fee is double that of an applicant for licensure by examination. While all application fees will increase, both types of applicants will be paying an identical and equitable amount.

ISSUE 3. Uniformity in renewal and application fees across professions.

As is stated in the Principles, renewal fees for all occupations regulated by a board should be consistent across occupations unless there is clear evidence to indicate otherwise. Registered nurses and licensed practical nurses proportionally account for similar costs for the Board of Nursing. They are similar in their rate of discipline and in their participation in the Health Practitioner Intervention Program (HPIP). Likewise, the amount of work entailed in application processing and credential review is similar for the two professions. The proposed renewal fee for the clinical nurse specialist is less because there are proportionally fewer disciplinary cases and less participation in HPIP.

There is a separate cost code and budget for certified nurse aides, so the proposed renewal fee is based accordingly.

Advantages and disadvantages to the licensees

Nurses licensed by the Board of Nursing will experience increased renewal fees under the proposed regulations. While that is a disadvantage to the licensees, the alternative of reduced services for the Board would be unacceptable to applicants, licensees and the general public. As a specially funded agency, renewal fees pay the vast majority of the expenses of Board operations, which include investigation of complaints against nurses and nurse aides, adjudication of disciplinary cases, review and approval of nursing and nurse aide education program, verification of licensure and education to other jurisdictions and entities, and communications with nurses about current practice and regulation. For certified nurse aides, renewal fees must cover the costs for investigation of complaints and adjudication of disciplinary cases under the Administrative Process Act.

ISSUE 4. Establishment of different fees for renewing an expired license versus reinstating a lapsed license.

Currently, Board of Nursing regulations require a fee of \$50 for an expired license, regardless of the amount of time elapsed – one day or ten years. For a person who is simply late in paying the renewal fee, the current “reinstatement” fee may seem excessive. In the Principles, there is a distinction made between those who are expired (have failed to renew within one renewal cycle) and those who are lapsed (have failed to renew beyond one renewal cycle). The appropriate late fee for an expired license should be set at 25 to 35% of the renewal fee (\$25 for a nurse or licensed practical nurse); the current renewal fee must also be paid. Since a reinstatement application is required for a licensee to reinstate a lapsed license, the reinstatement fee should include the current renewal fee, the late fee, and a credential review fee.

Reinstatement of a license which has been suspended or revoked necessitates an additional cost of a hearing before a panel of the Board. Therefore, an additional amount of \$40 is proposed for reinstatement of a suspended or revoked license to recover some of those costs to the Board.

Advantages and disadvantages to the licensees

For persons who are late in paying their biennial renewal but who pay within two years, there would be an advantage in the proposed regulations. Currently, the late fee is \$50; the proposed late fee is \$25. For those who fail to renew a license for more than a biennium, the proposed reinstatement will be a higher fee to cover the costs of a reinstatement application and the late fee.

ISSUE 5. Uniformity among boards for setting miscellaneous fees.

In setting proposed fees for miscellaneous activities of the Board, the Principles call for uniformity among boards and regulated entities. Such activities as replacement of

a duplicate license, duplicate certificate, or processing and collecting on a bad check are similar for all boards and should be based on cost estimates provided by the Deputy Director for Finance of the Department.

Advantages and disadvantages to the licensees

The advantage of proposed regulations is that all persons licensed or certified by a board under the Department of Health Professions will consistently pay a fee for miscellaneous activities determined by actual costs for that activity. There will not be inconsistent fees for licensees regulated under different boards. For nurses, the fee for a duplicate license will be reduced from \$15 to \$5; the fee for a returned check will increase from \$15 to \$25.

Advantage or disadvantages to the public

Fee increases proposed by the Board of Nursing should have no disadvantage to the consuming public. There is no projection of a reduction in the number of applicants for licensure or the number of licensed persons available to provide nursing services to the public. An increase in the biennial renewal fee will result in an additional \$15 per year for a nurse’s license and \$7.50 per year for a certified nurse aide. Nurse aides who work in facilities which receive Medicare and Medicaid funding are required to hold the certification.

There would be considerable disadvantages to the public if the Board of Nursing took no action to address its deficit and increase fees to cover its expenses. The only alternative currently available under the Code of Virginia would be a reduction in services and staff, which would result in delays in licensing applicants who would be unable to work and delays in approval or disapproval of education programs. Potentially, the most serious consequence would be a reduction in or reprioritization of the investigation of complaints against nurses and nurse aides. In addition, there may be delays in adjudicating cases of substandard care, neglect, abuse or other violations, resulting in potential danger to the patients who are often the most sick and vulnerable consumers in the Commonwealth.

5. Estimated Fiscal Impact of the Regulations

I. Fiscal Impact Prepared by the Agency:

Number of entities affected by this regulation:

The number of regulated entities (as of May 3, 1999) who would be affected by these regulations is:

Registered nurses	76,707
Licensed practical nurses	26,214
Certified nurse aides	37,306
Clinical nurse specialists	432

Projected cost to the agency:

The agency will incur some costs (approximately \$5000) for mailings to the Public Participation Guidelines Mailing List, conducting a public hearing, and sending copies of final regulations to regulated entities. Every effort will be made to incorporate those into anticipated mailings and board meetings already scheduled.

Projected costs to the affected entities:

For most applicants and regulated entities, the costs of acquiring and maintaining licensure will increase. Registered nurses and licensed practical nurses will pay an additional \$30 every two years to maintain a license to practice nursing. Clinical nurse specialists will also pay an additional \$30 per biennium. Applicants for licensure have been paying only a \$25 fee to have their application processed and credentials reviewed for licensure qualification. Once approved, they were licensed for at least one biennium and received a calligraphied wall certificate at no charge. Proposed regulations would include the costs of a license and a wall certificate in that initial application fee.

For nurses who are late sending in their biennial renewal but do renew an expired license within two years, the cost will be reduced from \$50 to \$25. For those whose license is lapsed beyond two years, a reinstatement application and fee will be required at a cost of \$120 (including the late fee and the biennial renewal).

Miscellaneous costs, such as replacement of a duplicate license or wall certificate, verification of a license or transcript, and returned check charges are uniformly proposed at amounts consistent with the actual costs incurred by the Department for those activities.

Certified nurse aides will have to pay an additional \$15 for biennial renewal of their registration, which is required for employment in any facility receiving Medicare or Medicaid funding.

Citizen input in development of regulation:

The Notice of Intended Regulatory Action was published on April 12, 1999 and subsequently sent to approximately 1100 persons and organizations on the Public Participation Guidelines Mailing List of the Board. The deadline for comment was May 12, 1999 and there was no comment received.

In addition, the three citizen members of the Board of Nursing participated in the discussions about fees and concurred with the fee proposal adopted by the Board.

Localities affected:

There are no localities in the Commonwealth affected by these amended regulations.

II. Fiscal Impact Prepared by the Department of Planning and Budget: (To be attached)

III. Agency Response:

c. Source of the legal authority to promulgate the contemplated regulation.

18 VAC 90-20-10 et seq. Regulations Governing the Practice of Nursing were promulgated under the general authority of Title 54.1 of the Code of Virginia.

Chapter 24 establishes the general powers and duties of health regulatory boards including the responsibility to promulgate regulations and levy fees.

§ 54.1-2400. General powers and duties of health regulatory boards.--The general powers and duties of health regulatory boards shall be:

- 1. To establish the qualifications for registration, certification or licensure in accordance with the applicable law which are necessary to ensure competence and integrity to engage in the regulated professions.*
- 2. To examine or cause to be examined applicants for certification or licensure. Unless otherwise required by law, examinations shall be administered in writing or shall be a demonstration of manual skills.*
- 3. To register, certify or license qualified applicants as practitioners of the particular profession or professions regulated by such board.*
- 4. To establish schedules for renewals of registration, certification and licensure.*
- 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 and Chapter 25 of this title.*

7. *To revoke, suspend, restrict, or refuse to issue or renew a registration, certificate or license which such board has authority to issue for causes enumerated in applicable law and regulations.*
8. *To appoint designees from their membership or immediate staff to coordinate with the Intervention Program Committee and to implement, as is necessary, the provisions of Chapter 25.1 (§ 54.1-2515 et seq.) of this title. Each health regulatory board shall appoint one such designee.*
9. *To take appropriate disciplinary action for violations of applicable law and regulations.*
10. *To appoint a special conference committee, composed of not less than two members of a health regulatory board, to act in accordance with § 9-6.14:11 upon receipt of information that a practitioner of the appropriate board may be subject to disciplinary action. The special conference committee may (i) exonerate the practitioner; (ii) reinstate the practitioner; (iii) place the practitioner on probation with such terms as it may deem appropriate; (iv) reprimand the practitioner; (v) modify a previous order; and (vi) impose a monetary penalty pursuant to § 54.1-2401. The order of the special conference committee shall become final thirty days after service of the order unless a written request to the board for a hearing is received within such time. If service of the decision to a party is accomplished by mail, three days shall be added to the thirty-day period. Upon receiving a timely written request for a hearing, the board or a panel of the board shall then proceed with a hearing as provided in § 9-6.14:12, and the action of the committee shall be vacated. This subdivision shall not be construed to affect the authority or procedures of the Boards of Medicine and Nursing pursuant to §§ 54.1-2919 and 54.1-3010.*
11. *To convene, at their discretion, a panel consisting of at least five board members or, if a quorum of the board is less than five members, consisting of a quorum of the members to conduct formal proceedings pursuant to § 9-6.14:12, decide the case, and issue a final agency case decision. Any decision rendered by majority vote of such panel shall have the same effect as if made by the full board and shall be subject to court review in accordance with the Administrative Process Act. No member who participates in an informal proceeding conducted in accordance with § 9-6.14:11 shall serve on a panel conducting formal proceedings pursuant to § 9-6.14:12 to consider the same matter.*
12. *To issue inactive licenses and certificates and promulgate regulations to carry out such purpose. Such regulations shall include, but not be limited to, the qualifications, renewal fees, and conditions for reactivation of such licenses or certificates.*

The proposed 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.

d. Letter of assurance from the office of the Attorney General.

See attached.

e. Summary of Public Comment received in response to the Notice of Intended Regulatory Action.

The Notice of Intended Regulatory Action was published on April 12, 1999 and subsequently sent to the Public Participation Guidelines Mailing List of the Board. The deadline for comment was May 12, 1999 and there was no comment received.

f. Changes to existing regulations.

18 VAC 90-20-30. Fees.

Fees are amended as follows:

Application for licensure by examination.....	\$25-105
Application for licensure by endorsement.....	\$50-105

Fees for application for licensure would now include \$25 for application processing and credential review, the cost of a license for one biennium (\$70), and the cost of the wall certificate (\$10). Since there are similar tasks required for review and approval of a nurse's application, whether licensure is sought by examination or endorsement, the same fee is proposed.

Reapplication for licensure by examination	\$25
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A fee is stated for processing another application and re-review of applicant's credentials, if the applicant does not take the examination or complete the application process within six months or if the candidate fails the licensure examination. Regulations currently require a fee, which is set at \$25.

Biennial licensure renewal	\$40-70
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The proposed fee reflects the costs for the administrative and disciplinary activities of the Board of Nursing and the allocated costs of the Department.

Late renewal.....	\$25
Reinstatement of <u>lapsed</u> license	\$50 <u>120</u>
<u>Reinstatement of suspended or revoked license</u>	<u>\$160</u>
<p>Currently, anyone who does not renew his license by the due date must be reinstated at a cost of \$50, regardless of the amount of time the license was expired. Proposed regulations would establish a late fee of \$25 (approximately 35% of the biennial renewal) for anyone who renews the expired license within the biennium. If the licensee allows his license to lapse beyond the biennium, it would require reinstatement with an application review fee (\$25), payment of the late fee (\$25) and biennial renewal fee (\$70) for a combined total of \$120. For reinstatement following suspension or revocation, the applicant would pay an additional \$40 to help offset the disciplinary cost for a reinstatement hearing (total fee of \$160).</p>	
Duplicate license	\$15 <u>5</u>
<p>The cost for producing and sending a duplicate license has been reduced, so the proposed fee would reflect the actual cost.</p>	
<u>Replacement wall certificate</u>	<u>\$15</u>
<p>A fee for replacing a wall certificate is currently been paid by the person making the request directly to the vendor. The proposed fee would make the process uniform for all boards within the Department.</p>	
Verification of license	\$25
Transcript of all or part of applicant/licensee records	\$20 <u>25</u>
<p>The cost of verifying a license to another jurisdiction or sending all or part of a transcript is estimated to be \$25, so the proposed fees would reflect those costs.</p>	
Returned check charge	\$15 <u>25</u>
<p>The proposed fee is estimated to be the actual administrative costs for processing and collecting on a returned check; it is proposed to be the same fee for all boards within the Department.</p>	
Application for CNS registration	\$50 <u>95</u>
<p>The proposed fee would include \$25 for application processing and credential review, the cost of the biennial renewal for the license (\$60) and a wall certificate (\$10).</p>	
Biennial renewal of CNS registration	\$30 <u>60</u>
<p>The fee is determined by the estimated administrative and disciplinary costs of the Board and allocated costs of the Department.</p>	
Reinstatement of lapsed CNS registration	\$25 <u>105</u>

Reinstatement would necessitate an application processing and credential review fee (\$25), payment of the late renewal fee (\$20) and cost of a biennial license (\$60).

Verification of CNS registration to another jurisdiction.....\$25
The actual cost is estimated to be \$25, so there is no change proposed.

Late renewal of CNS registration.....\$20
The penalty for late renewal of a CNS registration is proposed to be 30% of the biennial renewal.

18 VAC 90-20-190. Licensure by examination.

An amendment is proposed to clarify the that the “fee” referred to in subsection C 3 a and in subsection H 2 is the “reapplication” fee of \$25.

18 VAC 90-20-230. Reinstatement of licenses.

Amendments are proposed to conform the policies on reinstatement of the Board of Nursing to those in the “Principles for Fee Development” for all boards within the Department. Under the current rule in Nursing, anyone who is late renewing his license (even by one day) would pay the current renewal fee and a reinstatement fee of \$50. The proposed rule who require a person who wants to renew an expired license within one renewal cycle to pay a late fee of \$25 and the current renewal fee. Beyond the biennium, the lapsed license could be reinstated by submission of a reinstatement application and payment of a reinstatement fee.

The board also proposes a higher fee for reinstatement of a license which has been suspended or revoked to recover some of the costs for holding a hearing of the board.

18 VAC 90-20-350. Nurse aide registry.

The proposed renewal fee for a certified nurse aide would increase from \$30 to \$45 per biennium; the charge for a returned check is increased from \$15 to \$25.

g. Statement of reasoning for the regulations.

Need for Fee Increases

It is necessary for the Board of Nursing to increase their fees in order 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. Budgets for the nurse aide regulatory program and the nursing program are maintained separately but are funded through one set of regulations: 18 VAC 90-20-10 et seq. Regulations of the Board of Nursing.

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>Percent</u>	<u>Board</u>	<u>Amount</u>	
6/30/99 (I)	Nurse Aides	-\$315,253	-46.9%
6/30/00	Nurse Aides	-\$407,924	-48.2%
	Nursing	-\$1,299,307	-17.4%
6/30/02	Nurse Aide	-\$624,744	-60.7%
	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. It is projected that by the close of the 1999 fiscal year, the Board of Nursing will incur a deficit of \$315,253 or 46.9% of its total budget for the Nurse Aide program, and that the Board will continue to have deficits in both cost centers through the next two biennia. Since the fees from licensees no longer generate sufficient funds to pay operating expenses for the Board, a fee increase is essential.

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 Registered Nurses and Licensed Practical Nurses are \$40 each biennium and have not been increased since 1995 (\$1 of that amount is transferred to the Department of Health to fund the Nursing Scholarship Program).

With the severe reduction in federal funding in the early '90's, it was necessary for the Board to add a biennial renewal fee of \$20 for Certified Nurse Aides in 1995 and to increase it to \$30 in 1998. In the length of time it took to get final regulations in place, the deficits in the Nurse Aide Program continued to spiral, so the contemplated fees were sufficient to meet current expenses but insufficient to eliminate the deficit that had accumulated.

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, relocation of the Department, etc.) Attached is a chart of expenses, revenues and percentage of deficit for the two cost centers – Nursing and Nurse Aides – over the past two biennia, for the current biennium, and the projection for the next two biennia.

Fee increases for some 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.

h. Alternatives considered.

Prior to the publication of a Notice of Intended Regulatory Action to increase fees of the Board, the agency considered three possible solutions to the deficits in the Board of Nursing. They were:

- 1. General Fund Support.** 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.
- 2. Reduction in department/board operations and staff .** 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 investigations and discipline, license renewals, 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.
- 3. Increase fees through the promulgation of regulations.** 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. However, failure to fully fund the services through fees will have a detrimental affect on quality.

It was the recommendation of the Department that the Board of Nursing adopt the third alternative and seek to increase some of its fees.

Prior to consideration of amendments to regulations by the Board of Nursing, the Department of Health Professions set forth a set of principles by which all boards would be guided in the development of regulations. The “Principles for Fee Development” are intended to provide structure, consistency, and equity for all professionals regulated within the Department. In consideration of various alternatives and issues surrounding the adoption of fees, the Principles served to guide the Board in the development of an appropriate and necessary fee.

During the development of a fee proposal, the Board considered the following issues and alternatives:

1. Proration of application fees based on timing within the renewal cycle an applicant is initially licensed.

It is unknown at the time of application for initial licensure when or if the applicant will qualify. Applicants may be delayed or ineligible because they fail to subsequently submit required information (such as transcripts or verification from other states), do not meet substantive requirements (education, experience, moral character, etc.) or fail to pass an examination. While most candidates are eventually found eligible, it is impossible to predict when or if any given candidate will be licensed.

Therefore, in order to prorate an initial 'license fee' for the current period of licensure it would require the assessment, after the determination of eligibility, of each newly qualified candidate (estimated to be 5880 per year, including licensure by examination and endorsement). This represents a new series of transactions. To accomplish this, the board would need to incur a cost to program automated systems to generate assessments in various occupational categories. In addition to generating the assessment, the agency will be required to receive and account for the additional payment. This task could possibly be contracted out, as we do with a number of lock box transactions. All exceptions to lock box transactions however, are handled in-house, which is an activity that would result in additional administrative costs.

Prorating of fees would have negative impact on prompt licensing of nurses. It is likely that it would add a minimum of 14 days and likely average 21 days to the time it will take to issue a license after approval (the period to generate an assessment, mailing out, writing of a check, return mail, and accounting for the fee). In many cases a candidate is legally prohibited from employment until the license is in hand. Therefore, the equity that may be achieved by prorating fees will not be of sufficient value to lead to its implementation. During the two to three weeks of delay, the applicant could have been working with a license issued promptly upon approval by the Board. The additional income earned during that period would far exceed the small amount of the initial licensure fee that might have been saved by a system of proration.

In the proposed regulations, all applicants for a nursing license would be licensed for a full two years once eligibility has been determined. Since nurses renew biennially in their birth month, some applicants may receive a little more than two years, but no one would receive less than the equivalent of a biennial renewal, which is the amount calculated for initial licensure in the application fee.

2. Establishment of application and initial licensure fee for licensure by examination versus licensure by endorsement.

In accordance with “Principles for Fee Development”, the initial application and licensure fee should be based on: 1) the cost to the Board for application processing and credential review; 2) the examination costs, when paid by the board; 3) an appropriate portion of the license fee (renewal cost) relative to the period that the initial license will be issued prior to the first renewal; 4) cost of preparation and mailing a wall certificate; and 5) any other activity unique to and directly associated with initial licensure. Based on those Principles, the application and licensure fee for licensure by examination and by endorsement should be identical. There is a similar amount of time spent in application processing and credential review, and there are no examination costs paid by the board. Candidates pay those costs directly to the examination services. Therefore, the application fee, which is currently \$25 for licensure by examination and \$50 for licensure by endorsement, would be identical in the proposed regulations..

Currently, newly licensed nurses pay only the costs of application processing and review. They receive their first biennial license and their wall certificate at no cost. Following the Principles, the policy of the Board, as reflected in proposed regulation, would be to include those costs in the initial application fee. Also, current regulations require a new application if the applicant does not complete the process and pass the examination within six months. Following the Principles, the re-application fee should be the amount necessary to cover costs for application processing and review (\$25), but should not include the licensure fee and the fee for a certificate because those amounts were already included in the initial application fee.

3. Uniformity in renewal and application fees across professions.

As is stated in the Principles, renewal fees for all occupations regulated by a board should be consistent across occupations unless there is clear evidence to indicate otherwise. Registered nurses and licensed practical nurses proportionally account for similar costs for the Board of Nursing. They are similar in their rate of discipline and in their participation in the Health Practitioner Intervention Program (HPIP). Likewise, the amount of work entailed in application processing and credential review is similar for the two professions. The proposed renewal fee for the clinical nurse specialist is less because there are proportionally fewer disciplinary cases and less participation in HPIP.

There is a separate cost code and budget for certified nurse aides, so the proposed renewal fee is based accordingly.

4. Establishment of different fees for renewing an expired license versus reinstating a lapsed license.

Currently, Board of Nursing regulations require a fee of \$50 for an expired license, regardless of the amount of time elapsed – one day or ten years. For a person who is simply late in paying the renewal fee, the current “reinstatement” fee may seem excessive. In the Principles, there is a distinction made between those who are expired (have failed to renew within one renewal cycle)) and those who are lapsed (have failed to renew beyond one renewal cycle). The appropriate late fee for an expired license should be set at 25 to 35% of the renewal fee (\$25 for a nurse or licensed practical nurse); the current renewal fee must also be paid. Since a reinstatement application is required for a licensee to reinstate a lapsed license, the reinstatement fee should include the current renewal fee, the late fee, and a credential review fee.

Reinstatement of a license which has been suspended or revoked necessitates an additional cost of a hearing before a panel of the Board. Therefore, an additional amount of \$40 is proposed for reinstatement of a suspended or revoked license to recover some of those costs to the Board.

5. Uniformity among boards for setting miscellaneous fees.

In setting proposed fees for miscellaneous activities of the Board, the Principles call for uniformity among boards and regulated entities. Such activities as replacement of a duplicate license, duplicate certificate, or processing and collecting on a bad check are similar for all boards and should be based on cost estimates provided by the Deputy Director for Finance of the Department.

Adoption of fee proposal for registered nurses, licensed practical nurses, and clinical nurse specialists.

Prior to its adoption of proposed regulations, the Board discussed the “Principles for Fee Development” prepared by staff of the Department and reviewed the policies for applying those Principles to fees of the Board. It then considered three proposals prepared by the Finance Office of the Department, all of which follow the Principles for fee development but increase fees at a differing rate.

Given its statutory responsibility to levy fees sufficient to meet expenses of the Board, proposal #2 was adopted as the most reasonable and least burdensome. Proposal #1 would bring in sufficient revenue in each of the next two biennia but would be insufficient to eliminate an accumulated the deficit; the Board would continue in a deficit position through the 2002-04 biennium. The Board found that unacceptable. Proposal #3 would eliminate the deficit by the end of the 2000-02 biennium but would create a surplus in excess of 10% by the conclusion of the 2002-04 biennium. The Board found that alternative unacceptable because the fee increase would excessive.

Proposal #2 is acceptable to the Department, which depends on the revenue of the Board of Nursing for 35.6% of its allocated costs. Revenues of the Board would be sufficient to cover its costs during the next biennium and would reduce the deficit to approximately \$250,000. The Board would likely be in a break-even position during the middle of the next biennium and then would begin to realize a modest surplus.

Therefore, the Board unanimously adopted the fee structure reflected in proposal #2 and proposed the necessary amendments to its regulations.

Adoption of fee proposal for certified nurse aides.

The Board also considered three proposals prepared by the Finance Office of the Department for addressing the deficit in the Nurse Aide cost center, all of which follow the Principles for fee development but increase fees at a differing rate.

Given its statutory responsibility to levy fees sufficient to meet expenses of the Board, proposal #2 was adopted as the most reasonable and least burdensome. Proposal #1 would not bring in sufficient revenue in the next two biennia to fund the budget for that cost center much less eliminate an accumulated deficit. The Board found that unacceptable. Proposal #3 would eliminate the deficit by the end of the 2002-04 biennium but would begin to create a surplus in excess of 10%. The Board found that alternative unacceptable because the fee increase would be excessive.

Proposal #2 is acceptable to the Department; revenues of the Board would be sufficient to cover its costs during the next two biennia and would reduce the deficit to approximately \$102,000. The Board would likely be in a break-even position during the middle of the 2004-2006 biennia.

Therefore, the Board unanimously adopted the fee structure reflected in proposal #2 and proposed the necessary amendments to its regulations.

i. Statement of clarity.

Prior to the adoption of proposed regulations by the Board, the Deputy Director of the Department of Health Professions along with other members of the staff developed a set of Principles by which boards would be guided in the development of fees mandated by the Code of Virginia. The purpose of the Principles was to provide guidance for clarity, reasonableness and consistency among boards and among professions regulated within a single board. The clarity and reasonableness of the language that was adopted had the approval of the licensees and citizen members of the Board of Nursing and the Assistant Attorney General who worked with the Board on regulatory language.

j. Schedule for review of regulation.

The proposed amendments to these regulations will be reviewed following publication in the Register and the 60-day public comment period. If there are any oral or written comments received, the Board will consider revisions to the proposal prior to adoption of final regulations.

Public Participation Guidelines of the Board of Nursing (18 VAC 90-10-10 et seq.) require a thorough review of regulations each biennium. In addition, § 54.1-113 of the Code of Virginia requires a review of the fee structure at the close of each biennium. Therefore, the Board will review this regulation in 2001-02 and will recommend amendments as necessary.

Any review which indicates that the Board is accumulating a surplus in funds in excess of 10% of revenue over budget would result in proposed regulations to reduce fees. That action could be expedited under an exemption from the Administrative Process Act (§ 9-6.14:4.1 of the Code of Virginia).

In addition, the Board receives public comment at each of its meetings and will consider any request for amendments. Petitions for rule-making also receive a response from the Board during the mandatory 180 days in accordance with its Public Participation Guidelines.

k. Anticipated Regulatory Impact

Projected cost to the state to implement and enforce:

(i) Fund source:

As a special fund agency, the Board of Nursing 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 education program approval, administration of licensing, investigation of complaints, and disciplinary hearings.

(ii) Budget activity by program or subprogram:

(iii) One-time versus ongoing expenditures:

The agency will incur some costs (approximately \$5000) for mailings to the Public Participation Guidelines Mailing List, conducting a public hearing, and sending copies of final regulations to regulated entities.

Projected cost on localities:

There are no projected costs to localities.

Description of entities that are likely to be affected by regulation:

The entities that are likely to be affected by these regulations would be registered nurses, licensed practical nurses, and clinical nurse specialists who hold a license in Virginia and persons who would be applying for licensure. In addition, persons who want to be registered as certified nurse aides would be affected by the increase in the renewal fee. Registration is required for employment in a facility that receives federal funding under Medicare or Medicaid.

Estimate of number of entities to be affected:

The number of regulated entities (as of May 3, 1999) who would be affected by amended renewal fees is:

Registered nurses	76,707
Licensed practical nurses	26,214
Certified nurse aides	37,306
Clinical nurse specialists	432

The number of applicants for licensure as registered nurses, licensed practical nurses or clinical nurse specialist who will pay an additional fee is estimated to be 5880.

The number of nurses who are late in sending in their biennial renewal and will have a reduction in the penalty fee from \$50 to \$25 is estimated to be 2315. The number who are will request relicensure of a lapsed license and will have to be reinstated is estimated to be 578; approximately 50 nurses each biennium will pay an additional \$30 to reinstate a suspended or revoked license.

Approximately 700 nurses each biennium who request a duplicate license will have a reduction from \$15 to \$5 in the fee the Board charges. Approximately 60 nurses who now pay a fee to a contractor will pay the Board \$15 for replacement of a wall certificate. It is also estimated that 275 nurses will have an increase in the fee from \$20 to \$25 for sending transcripts to other jurisdictions or entities.