



Virginia Department of Planning and Budget **Economic Impact Analysis**

18 VAC 80-20 Hearing Aid Specialist Regulations
Department of Professional and Occupational Regulation
Town Hall Action/Stage: 5274/9051
November 2, 2020

Summary of the Proposed Amendments to Regulation

The Board for Hearing Aid Specialists and Opticians (Board) proposes to increase the hearing aid specialist fees it levies for initial licensure, renewal, reinstatement, and temporary permits. All fees would be increased from their current levels (which range from \$20-\$50) to \$125. The Board proposes to increase its fees based on a current cash deficit, which is projected to keep growing unless fees are increased.

Background

The Department of Professional and Occupational Regulation (DPOR) is funded entirely from revenue collected by the regulatory boards it supports for license applications, renewal, examination fees, and other licensing fees. Hence, DPOR must collect adequate revenue to support its mandated activities and operations. Fee revenue collected on behalf of the various Boards funds the Department's authorized special revenue appropriation. The Board determines the fees it collects based on the adequacy of the fees to provide sufficient revenue for upcoming operating cycles; it has no other source of income.

Section 54.1-201 of the Code of Virginia requires that the boards within DPOR "levy and collect fees for certification or licensure and renewal that are sufficient to cover all expenses for the administration and operation of the regulatory board and a proportionate share of the expenses" of DPOR.¹ In addition, the Callahan Act (§ 54.1-113) requires that regulatory boards

¹ See <https://law.lis.virginia.gov/vacode/title54.1/chapter2/section54.1-201/>.

adjust their fees whenever the account shows that “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” so that “the fees are sufficient but not excessive.”²

The board has been working to increase fees since 2014. The board’s fees were last adjusted effective February 1, 2017 (FY 2017) through a regulatory action that was submitted for amendment in FY 2014.³ However, this action did not increase the license fees, but rather removed certain fees from the regulation and replaced them with language requiring the fees to be set in accordance with the Code of Virginia §2.2-4300 (Virginia Procurement Act) and §54.1-201.4. Subsequently, DPOR was subject to a review by the Joint Legislative Audit and Review Commission (JLARC) in 2018. In its report, JLARC stated “DPOR should revise the fee change using more realistic expense projections... If, however, DPOR determines that the fee change is not needed in the near term, the fee change could be withdrawn.”⁴

Specifically, the Board proposes the following fee increases:

- Application Fee from \$30 to \$125 (317% increase)
- Temporary Permit Fee from \$30 to \$125 (317% increase)
- Renewal from \$20 to \$125 (525% increase)
- Reinstatement from \$50 to \$125 (150% increase).

The other profession within the Board is Opticians, and the application and renewal fees for that profession are currently \$100. With the effective date for new fees anticipated to be in FY2021, it will have been 18 years since fees for hearing aid specialists have been raised. This has allowed the Board to spend down an accumulated cash balance that it has retained. The Board reports that regulants have thus been anticipating a fee increase.⁵ Further, the license fee and temporary permit fee appear to have been \$130 in December 2002, along with a renewal fee of \$175 and a reinstatement fee of \$350. Hence, although the increase seems sharp on a percentage

² See <https://law.lis.virginia.gov/vacode/title54.1/chapter1/section54.1-113/>.

³ See <https://townhall.virginia.gov/L/ViewStage.cfm?stageid=7560>.

⁴ See <http://jlarc.virginia.gov/pdfs/reports/Rpt509.pdf>.

⁵ See page 3 of

https://townhall.virginia.gov/l/GetFile.cfm?File=13\5274\9051\AgencyStatement_DPOR_9051_v1.pdf.

basis, the amount is comparable the fees that prevailed before the Board lowered them to decrease its cash balances.⁶

The Board reported its Callahan Act percentage (i.e. the ratio of cash balances to expenditures at the end of a biennium) to be -0.29% for the biennium ending in 2020. Unless a fee increase is implemented in the interim, the Board projects that the Callahan Act percentage would fall as low as -14.6% at the end of the 2020-2022 biennium, and -29.7% at the end of the 2022-2024 biennium.⁷ Based upon these projections, it appears that the longer the Board postpones the fee increase, the higher the fee would have to be in order to close the deficit.

Estimated Benefits and Costs

The proposed fee increases would increase costs to currently licensed hearing aid specialists, and to temporary hearing aid specialist permit holders, who apply to renew their license once the increase became effective. The proposed fee increases would also affect future first-time applicants for licenses or permits, as well as those seeking to reinstate their license or permit after the fee increase became effective.

The Board estimates that biennial revenue would increase by approximately \$100,600 once the fee increases go into effect.⁸ Thus, the proposed fee increases would benefit the Board by eliminating the current funding deficit as well as ensuring that it has adequate revenue to pay for ongoing operational expenses. Lastly, since the Board has been trying to increase the fees since 2014, regulants have had time to anticipate and prepare for future fee increases.

DPOR considered three alternatives to the fee increases and found them to be non-viable and potentially more costly. First, a reduction in services would result in delays in issuing licenses, which would impose costs to regulants by creating barriers to their ability to work, broadly decrease the effectiveness of the Board in protecting public health, safety and welfare, and potentially decrease its revenues. Second, DPOR could obtain a Treasury loan; however, this would be a short-term solution that would require higher fee increases in the future to repay the

⁶ See https://townhall.virginia.gov/l/GetFile.cfm?File=13\808\2177\Text_DPOR_2177_v2.pdf. Although the action did not affect fees, the final text shows the fees that were prevalent at the time. The fees were lowered through a separate exempt action: <https://townhall.virginia.gov/l/ViewStage.cfm?stageid=2407>.

⁷ See Addendum 4 of the August 12, 2020 Board meeting minutes: https://townhall.virginia.gov/L/GetFile.cfm?File=Meeting\13\29204\Minutes_DPOR_29204_v1.pdf.

⁸ See page 6 of the ABD: https://townhall.virginia.gov/l/GetFile.cfm?File=13\5274\9051\AgencyStatement_DPOR_9051_v1.pdf.

loan. Finally, supplementing Board revenue with general funds would shift the Board's costs to taxpayers at large, instead of regulants who more directly benefit from the activities of the Board. It would also impose significant delays and administrative costs since allocating general fund moneys to DPOR would require a change in the Code of Virginia and the Appropriations Act. Thus, although the proposed amendments increase costs to regulants, they impose a lower cost overall relative to these alternatives.

Businesses and Other Entities Affected

The Board had 814 licensed hearing aid specialists and 48 temporary hearing aid specialist permit holders as of October 1, 2020.⁹ The Board estimates that there are approximately 73 first-time hearing aid specialist applicants and 53 temporary permit holder applicants annually.

Small Businesses¹⁰ Affected

According to the Bureau of Labor Statistics, hearing aid specialists nationwide are most often employed by health and personal care stores, offices of other health practitioners, other ambulatory health care services, offices of physicians, and in general medical and surgical hospitals.¹¹ Thus, the proposed amendments could affect such establishments either (i) if they are businesses that are independently owned and operated by hearing aid specialists, or (ii) if they are small businesses that hire hearing aid specialists *and* cover the cost of maintaining their license. However, the number of such small businesses in Virginia is unknown.

Localities¹² Affected¹³

The proposed amendments would not likely disproportionately affect any particular localities, nor introduce costs for local governments.

Projected Impact on Employment

⁹ See [http://www.dpor.virginia.gov/uploadedFiles/MainSite/Content/Records_and_Documents/REG_POP\(1\).pdf](http://www.dpor.virginia.gov/uploadedFiles/MainSite/Content/Records_and_Documents/REG_POP(1).pdf).

¹⁰ Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as “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.”

¹¹ See <https://www.bls.gov/oes/current/oes292092.htm>.

¹² “Locality” can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

¹³ § 2.2-4007.04 defines “particularly affected” as bearing disproportionate material impact.

The proposed amendments could discourage some individuals pursuing licensure as hearing aid specialists due to the higher license fees, to the extent that they perceive the increase in fees to be greater than the benefits of employment in this profession. However, it is unlikely to affect the overall employment of licensed hearing aid specialists since employers would not be directly affected by the increase in license fees.

Effects on the Use and Value of Private Property

The proposed amendments moderately increase costs for hearing aid specialists. To the extent that businesses that employ hearing aid specialists pay for these fees, the proposal could decrease the value of such firms by the amount of the fees or any ancillary costs. Real estate development costs would not be affected.

Legal Mandates

General: The Department of Planning and Budget has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia (Code) and Executive Order 14 (as amended, July 16, 2018). Code § 2.2-4007.04 requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the report should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

Adverse impacts: Pursuant to Code § 2.2-4007.04(D): In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance within the 45-day period.

If the proposed regulatory action may have an adverse effect on small businesses, Code § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to Code § 2.2-4007.1, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.