

<h1>Regulatory Analysis Form</h1>		This space for use by IRRC
(1) Agency Department of State Bureau of Professional and Occupational Affairs State Board of Examiners of Nursing Home Administrators		IRRC Number: 2469
(2) I.D. Number (Governor's Office Use) 16A-6210		
(3) Short Title Biennial Renewal Fees		
(4) PA Code Cite 49 Pa. Code §39.72	(5) Agency Contacts & Telephone Numbers Primary Contact: Roberta L. Silver, Counsel State Board of Examiners of Nursing Home Administrators (717) 783-7200 Secondary Contact: Joyce McKeever, Deputy Chief Counsel, Department of State (717) 783-7200	
(6) Type of Rulemaking (check one) <input type="checkbox"/> Proposed Rulemaking <input checked="" type="checkbox"/> Final Order Adopting Regulation <input type="checkbox"/> Final Order, Proposed Rulemaking Omitted	(7) Is a 120-Day Emergency Certification Attached? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes: By the Attorney General <input type="checkbox"/> Yes: By the Governor	
(8) Briefly explain the regulation in clear and nontechnical language. The regulation increases the biennial renewal fee for nursing home administrator licensees. The new fee is needed because the current fee, established in 1994, no longer covers the cost of sustaining the Board's operations.		
(9) State the statutory authority for the regulation and any relevant state or federal court decisions. The amendments are authorized under section 7.1(a) of the Nursing Home Administrators License Act (act), 63 P.S. §1107.1(a).		

Regulatory Analysis Form

(10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.

Yes. The Board is required by section 7.1(a) of the act (63 P.S. § 1107.1(a)) to reconcile its expenses and revenue biennially and to increase fees as needed to meet or exceed projected expenditures.

(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?

The Board is required by section 7.1(a) of the act (63 P.S. § 1107.1(a)) to set fees to raise sufficient revenue to meet expenditures. It is anticipated that without raising fees the Board will realize a deficit of \$128,711.53 in fiscal year 2004-2005 and a deficit of \$795,711.53 by fiscal year 2010-2011.

(12) State the public health, safety, environmental or general welfare risks associated with nonregulation.

Nonregulation would adversely impact the fiscal integrity of the Board. If left unregulated, the costs of providing services would exceed expenditures. Non-regulation of nursing home administrators increases the risk of substandard care, which adversely affects public health and the provision of effective nursing home services to patients.

(13). Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)

Both recipients of nursing home administrator services in the Commonwealth and the licensee population will benefit by having adequate funding for the Board to regulate the profession and to ensure enforcement of the licensure laws and standards. Adequate enforcement efforts ensure the quality of care provided by nursing home administrators in the Commonwealth.

Regulatory Analysis Form

(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effects as completely as possible and approximate the number of people who will be adversely affected.)

The licensee population will bear the cost of the increased fee.

(15) List the persons, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply.)

There were 1,905 actively licensed nursing home administrators as of December 1, 2004. However, the Board estimates that fewer (approximately 1,826) licensees apply for licenses biennially and therefore uses a licensee population of 1,826 to calculate projected revenues and expenses.

(16) Describe the communications with and input from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.

Notice of proposed rulemaking was published at 35 *Pa.B.* 2402 (April 23, 2005). Publication was followed by a 30-day public comment period during which the Board received seventeen public comments. On June 22, 2005, the Independent Regulatory Review Commission (IRRC) provided three comments for the Board's consideration. The Board did not receive any comments from the House Professional Licensure Committee (HPLC) or the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC). The final rulemaking responds to the comments provided by the public commentators and IRRC.

(17) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures which may be required.

The Board estimates that 1,826 nursing home administrators will renew their licenses biennially. Total additional cost for the entire regulated community for a biennial period is approximately \$345,114. No legal, accounting or consulting procedures will be implicated in complying with the regulatory amendments. Biennial renewal fees will cost nursing home administrators an additional \$189 each.

Regulatory Analysis Form

(18) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures which may be required.

Local governments will not be affected by this regulation.

(19) Provide a specific estimate of the costs and/or savings to state government associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required.

The Board will not incur an increase in administrative costs by implementing the regulation. Rather, the regulatory amendments will permit the Board to recoup the costs of its operations.

Regulatory Analysis Form

(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current fiscal year and five subsequent years.

	2004-	2005-	2006-	2007-	2008-	2009-2010
SAVINGS:	N/A	N/A	N/A	N/A	N/A	N/A
Regulated Community						
Local Government						
State Government						
Total Savings						
COSTS:						
Regulated Community	0	\$345,114	0	\$345,114	0	\$345,114
Local Government						
State Government						
Total Costs						
REVENUE LOSSES:	N/A	N/A	N/A	N/A	N/A	N/A
Regulated Community						
Local Government						
State Government						
Total Revenue Losses						

(20a) Explain how the cost estimates listed above were derived.

The increase in the biennial renewal fee is \$189 for each licensee. There are 1,826 licensees who are expected to renew each biennium. One hundred and eighty-nine dollars times 1,826 licensees equals \$345,114.

Regulatory Analysis Form

(20b) Provide the past three-year expenditure history for programs affected by the regulation.

Program	FY-3 FY 02-03 Actual	FY- 2 FY 03-04 Actual	FY- 1 FY 04-05 Projected	Current FY FY 05-06 Budgeted
State Board of Examiners of Nursing Home Administrators	\$ 208,123.21	\$ 213,042.26	\$ 201,436.00	\$ 250,000.00

(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs.

The amendment to the existing regulations is mandated by section 7.1(a) of the act (63 P.S. § 1107.1(a)), so that Board revenues are sufficient to meet Board expenses over a two-year period.

See the attached fee report form for calculations of estimated ending balances for fiscal years 2005-2006 and 2006-2007.

(22) Describe the nonregulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal.

No nonregulatory alternatives were considered. See Question 21.

(23) Describe alternative regulatory schemes considered and the costs associated with those schemes. Provide the reasons for their dismissal.

The Board considered three alternative regulatory schemes. The Board considered a 150% increase effective for the July 1, 2008 renewal at a cost of \$270.00 for the proposed renewal fee. The Board dismissed this scheme because projected revenues would not have been sufficient to match projected expenditures over a two year period, as required by section 7.1(a) of the act (63 P.S. § 1107.1(a)), in any of the years from FY 04-05 through FY 10-11. The Board also considered a 150% increase effective for the July 1, 2006 renewal at a cost of \$270.00 for the proposed renewal fee. The Board dismissed this scheme because projected revenues would not have been sufficient to match projected expenditures over a two-year period until FY 08-09 and FY 09-10. Finally, the Board considered a 175% increase effective for the July 1, 2008 renewal at a cost of \$297.00 for the proposed renewal fee. The Board dismissed this scheme because projected revenues would not have been sufficient to match projected expenditures in any of the years from FY 04-05 through FY 10-11.

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Regulatory Analysis Form

(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulation.

There are no federal licensure standards.

(25) How does this regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?

This regulation will not put Pennsylvania licensees at a competitive disadvantage with other states. The following is a comparison of the fees charged in the surrounding states.

Delaware	\$150.00
Maryland	\$100.00
New Jersey	\$150.00
New York	\$ 40.00
Ohio	\$500.00
West Virginia	\$600.00

(26) Will the regulation affect existing or proposed regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

No.

(27) Will any public hearings or informational meetings be scheduled? Please provide the dates, times, and locations, if available.

The Board reviews its regulatory proposals at regularly scheduled public meetings each month, generally on the second Wednesday of every month. Meetings are held in the Bureau of Professional and Occupational Affairs' offices at 2601 North Third Street, Harrisburg, Pennsylvania. Please contact the Board Administrator for further information or see the Department of State's website at www.dos.state.pa.us/nha. However, in light of the statutory mandate, the Board has not scheduled public hearings or informational meetings regarding this regulation.

Regulatory Analysis Form

(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports which will be required as a result of implementation, if available.

No changes to reporting, record keeping or other paperwork are required by this regulation.

(29) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

The Board has perceived no special needs of any subset of its licensees for whom special provisions should be made.

(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?

The regulation will be effective upon publication as final rulemaking in the *Pennsylvania Bulletin* and the fee increase will take effect and be collected with the biennial renewal period beginning July 1, 2006.

(31) Provide the schedule for continual review of the regulation.

The Board reviews its revenues and costs of its programs on a fiscal year and biennial basis.

FEE REPORT FORM

Agency: State - BPOA

Date: 12/09/2004

Contact: Basil Merenda

Phone No. 783-7192

Fee Title, Rate and Estimated Collections:

Estimated Biennial Revenue:

Nursing Home Administrators - \$542,322.00 (1,826 x \$297.00)

Total Estimated Biennial Revenue: \$542,322.00

Fee Description:

The fee will be charged biennially to every applicant for license renewal.

Fee Objective:

The fee should defray a substantial portion of the State Board of Nursing Home Administrators administrative overhead, specifically the difference between the Board's total biennial expenditures and its total biennial revenues from non-renewal sources.

Fee-Related Activities and Costs:

Estimated balance at end of 04/05 cycle:	(128,711.53)
FOR BIENNIAL CYCLE 7/01/05-6/30/06	
Estimated non-renewal revenue:	30,000.00
Estimated renewal revenue @ above rates:	542,322.00
Total revenue available:	572,322.00
Estimated expenditures:	247,000.00
Estimated ending balance on 6/30/06:	<u>196,610.47</u>
FOR BIENNIAL CYCLE 7/01/06-6/30/07	
Estimated non-renewal revenue:	30,000.00
Estimated renewal revenue @ above rates:	83,000.00
Estimated expenditures:	254,000.00
Estimated ending balance on 6/30/07:	<u>55,610.47</u>

Analysis, Comment, and Recommendation:

It is recommended that the above renewal fee's be established to cover projected funding shortfalls between the Board's total biennial expenditures and its total biennial revenues from non-renewal sources.

\$35; for cosmetologists from \$23 to \$35; for cosmetology teachers from \$36 to \$55; for manicurists from \$21 to \$35; for cosmetician shops from \$25 to \$60; for cosmetology shops from \$41 to \$60; for manicurist shops from \$25 to \$60; and for cosmetology schools from \$66 to \$150.

The proposed rulemaking also deletes a reference in § 7.2 to a cosmetology manager's license, based on the amendments to Act 86 made by the section 3 of the act of June 29, 2002 (P. L. 645, No. 98) (63 P. S. § 510.4), which removed the requirement that a cosmetology shop owner employ a licensed manager if the owner does not manage his own shop.

Fiscal Impact

The proposed rulemaking will increase the biennial renewal fee for all classes of Board licensees. The proposed rulemaking should have no other fiscal impact on the private sector, the general public or political subdivisions.

Paperwork Requirements

The proposed rulemaking will require the Board to alter some of its forms to reflect the new biennial renewal fees. However, the proposed rulemaking should not create additional paperwork for the private sector.

Sunset Date

Act 86 requires that the Board monitor its revenue and expenses on an FY and biennial basis. Therefore, no sunset date has been assigned.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on April 13, 2005, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate Consumer Protection and Professional Licensure Committee and the House Professional Licensure Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Board, the General Assembly and the Governor of comments, recommendations or objections raised.

Public Comment

Interested persons are invited to submit written comments, suggestions or objections regarding this proposed rulemaking to Linda Dinger, Administrator, State Board of Cosmetology, P. O. Box 2649, Harrisburg, PA 17105-2649 within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*.

SUSAN E. RINEER,
Chairperson

Fiscal Note: 16A-4512. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 7. STATE BOARD OF COSMETOLOGY

GENERAL PROVISIONS

§ 7.2. Fees.

Fees charged by the Board are as follows:

Biennial renewal of manicurist's license.....	\$[21] 35
Biennial renewal of cosmetician's license.....	\$[21] 35
Biennial renewal of cosmetologist's license.....	\$[23] 35
Biennial renewal of [cosmetology shop manager's or] cosmetology teacher's license	\$[36] 55
Biennial renewal of cosmetology shop's license.....	\$[41] 60
Biennial renewal of cosmetician or manicurist shop's license.....	\$[25] 60
Biennial renewal of cosmetology school's license.....	\$[66] 150

[Pa.B. Doc. No. 05-765. Filed for public inspection April 22, 2005, 9:00 a.m.]

STATE BOARD OF EXAMINERS OF NURSING HOME ADMINISTRATORS

[49 PA. CODE CH. 39]

Biennial Renewal Fees

The State Board of Examiners of Nursing Home Administrators (Board) proposes to amend § 39.72 (relating to fees) to read as set forth in Annex A. The proposed rulemaking would increase the biennial license renewal fee for nursing home administrators from \$108 to \$297.

Effective Date

The new fees will be effective upon final-form publication in the *Pennsylvania Bulletin* and will apply to the biennial renewal beginning July 1, 2006.

Statutory Authority

Section 7.1(a) of the Nursing Home Administrators License Act (act) (63 P. S. § 1107.1(a)) requires the Board to increase fees by regulation to meet or exceed projected expenditures if the revenues raised by fees, fines and civil penalties are not sufficient to meet Board expenditures.

Background and Need for Amendments

The Board's current biennial license renewal fee for nursing home administrators was established by regulation at 24 Pa.B. 6564 (December 31, 1994). Under section 7.1(a) of the act, the Board is required by law to support

its operations from the revenue it generates from fees, fines and civil penalties. In addition, the act provides that the Board must increase fees if the revenue raised by fees, fines and civil penalties is not sufficient to meet expenditures over a 2-year period. The biennial renewal fees fund nearly all of the Board's costs.

At Board meetings in July and December 2004, the Department of State's Bureau of Finance and Operations (BFO) presented a summary of the Board's revenue and expenses for Fiscal Years (FY) 2001-2002 through 2003-2004, and projected revenue and expenses through FY 2010-2011. The BFO projected a deficit of \$128,711.53 in FY 2004-2005, a deficit of \$125,711.53 in FY 2005-2006, a deficit of \$319,711.53 in FY 2006-2007, a deficit of \$331,711.53 in FY 2007-2008, a deficit of \$541,711.53 in FY 2008-2009, a deficit of \$569,711.53 in FY 2009-2010 and a deficit of \$795,711.53 in FY 2010-2011. The BFO recommended that the Board raise fees to meet or exceed projected expenditures, in compliance with section 7.1(a) of the act.

The Board's review of its actual and projected expenses for the past 5 years revealed significant shortfalls in the areas of enforcement and investigation, legal office expenses and legislative and regulatory analysis. For example, despite annual increases in projected expenses, actual enforcement and investigation costs were \$13,242.21 from FY 2002-2003 to 2003-2004. The actual expenses for the legal office and legislative and regulatory analysis increased \$18,879.37 and \$7,975.38, respectively, from FY 2002-2003 to 2003-2004. Overall increased expenditures in these program areas have resulted from a steady increase in the number of complaints opened each year regarding nursing home administrators and, therefore, greater investigative, enforcement and legal activity. At the same time, the Board's licensee population has declined by 400 licensees over the past 5 years, decreasing the Board's biennial revenue. The BFO anticipates that the proposed new biennial renewal fees will enable the Board to recapture the current deficit and meet its estimated expenditures for at least 10 years. Biennial renewal fees were last raised from \$85 to \$108 at 24 Pa.B. 6564. The 1994 increase was first applied to the 1996 biennial renewal.

In determining the fee, the Board also considered the renewal fees charged to nursing home administrators in the six surrounding states. The Board found that the proposed increase to \$297 would be lower than two fees and higher than four fees charged by contiguous states, and therefore consistent with the renewal fees charged in the surrounding states.

Description of Proposed Amendments

The proposed rulemaking would increase the biennial renewal fee for all nursing home administrators from \$108 to \$297. The BFO anticipates that the proposed new fees will enable the Board to recapture the current deficit and meet its estimated expenditures through the 2010-2011 biennial cycle.

The proposed fees will affect a total licensee population of approximately 1,826 nursing home administrators. The Board estimates these fees will generate \$572,322 in biennial revenue. If the proposed rulemaking is effectuated for the July 1, 2006, renewal, the revenue would be used to recapture projected deficits totaling \$795,711.53 by the end FY 2010-2011 and to fund anticipated expenditures from FY 2005-2006 through at least FY 2010-2011.

Fiscal Impact

The proposed rulemaking will increase the biennial renewal fee for nursing home administrators. The proposed rulemaking should have no other fiscal impact on the private sector, the general public or political subdivisions.

Paperwork Requirements

The proposed rulemaking will require the Board to alter some of its forms to reflect the new biennial renewal fee. However, the proposed rulemaking should not create additional paperwork for the private sector.

Sunset Date

The act requires that the Board monitor its revenue and costs on a FY and biennial basis. Therefore, no sunset date has been assigned.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on March 29, 2005, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate Consumer Protection and Professional Licensure Committee and the House Professional Licensure Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Board, the General Assembly and the Governor of comments, recommendations or objections raised.

Public Comment

Interested persons are invited to submit written comments, suggestions or objections regarding this proposed rulemaking to Christina Stuckey, Administrator, State Board of Examiners of Nursing Home Administrators, P.O. Box 2649, Harrisburg, PA 17105-2649 within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Reference No. 16A-6210 (Biennial Renewal Fees) when submitting comments.

BARRY S. RAMPER, II,
Chairperson

Fiscal Note: 16A-6210. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 39. STATE BOARD OF EXAMINERS OF NURSING HOME ADMINISTRATORS

RENEWAL

§ 39.72. Fees.

The following is a schedule of fees charged by the Board:

Biennial renewal of nursing home administrators license \$[108] 297

* * * * *

[Pa.B. Doc. No. 05-766. Filed for public inspection April 22, 2005, 9:00 a.m.]

STATE BOARD OF LANDSCAPE ARCHITECTS

[49 PA. CODE CH. 15]

General Revisions

The State Board of Landscape Architects (Board) proposes to amend §§ 15.2, 15.11, 15.14, 15.16, 15.18, 15.23, 15.32—15.34, 15.36, 15.41, 15.54, 15.56, 15.72, 15.73, 15.76 and 15.79 and to delete §§ 15.19, 15.20 and 15.37 (relating to consideration and approval of application; Recording Board action; and public information) to read as set forth in Annex A. The proposed rulemaking amends registration without examination provisions and makes general editorial changes.

Effective Date

The proposed rulemaking will be effective upon final-form publication in the *Pennsylvania Bulletin*.

Statutory Authority

The proposed rulemaking is authorized under section 4(9) of the Landscape Architects' Registration Law (act) (63 P.S. § 904(9)).

Background and Purpose

The purpose of the proposed rulemaking is to amend the existing regulations to do the following: delete references to the specific Board approved licensure examination; amend provisions regarding Board procedures to conform to actual Board procedures; delete unnecessary provisions and clarify existing provisions; and clarify the Board's process regarding issuing licenses without examination.

Description of Proposed Amendments

Section 15.2 (relating to Board proceedings and meetings) would be amended by making the conduct of Board meetings according to Roberts' Rules of Order permissive rather than mandatory.

Section 15.11(a) (relating to filing procedures) would be amended by deleting the reference to the Board's address. The Board's address has changed recently and including the address in the regulations is unnecessary since the application itself will provide the Board's address.

Section 15.14 (relating to retention of documents) would be amended to delete the option of an applicant to submit copies of documents rather than the original documents. To evaluate an applicant for licensure, the Board believes that the original document is the best display of the applicant's work product.

Section 15.16(b) (relating to references) would add a sentence clarifying that the references should be sent to the Board by the individual writing the reference rather than by the applicant. Subsection (d) would delete the requirement that a reference attest to the applicant's moral character since the accuracy of an individual attesting to one's moral character is hard to measure.

Section 15.18 (relating to certification) would be amended to delete the temporary certification process, as it is no longer necessary. Currently, once a license is approved, it is automatically considered active and notification of the approval is listed on the Board's website. In addition, the licensee receives the permanent certificate in about 2 weeks following approval.

The Board is proposing to delete §§ 15.19 and 15.20 because, under 65 Pa.C.S. Chapter 7 (relating to Sunshine Act), all formal action is required to be voted on in public session. Also, all formal action is required to be recorded in the Board's minutes. Therefore, these provisions are unnecessary.

Section 15.23(a) (relating to practice by out-of-State landscape architects) would be amended by reflecting the exact language of the act.

Section 15.32 (relating to change of name or address; fee) would delete the reference to "fee" in the title because this section does not address a fee.

Section 15.33(c) and (d) (relating to seals) would be amended by deleting the requirement that a registrant provide the Board with an imprint of the stamp or an impression of the seal. The Board has found that this requirement is difficult to enforce. Rather, the Board will provide a sample seal, as part of this rulemaking, to use as an example of the kind of stamp or seal to be used by registrants.

Subsection 15.34(b) (relating to biennial registration, inactive status and expired certificates) would be amended by deleting the requirement that an applicant who wishes to return to active status after being inactive must provide a notarized affidavit of nonpractice. The Board has not been requiring a notarized affidavit. Instead, the Board's application requires the applicant to indicate whether the applicant has practiced landscape architecture in this Commonwealth during inactive status.

Section 15.36 (relating to permitted practices) would be amended by deleting the procedures for filing papers regarding establishing a corporation. Because subsection (a) already states that a landscape architect may practice with other persons through the formation of an association or corporation so long as the arrangement is permitted by law, and because the Corporation Law dictates the requirements for filing these arrangements, the Board's regulations are unnecessary.

Section 15.37 would be deleted because the act of June 21, 1957 (P.L. 390, No. 212) (65 P.S. §§ 66.1—66.9), known as the Right-to-Know Law, already covers what information is considered to be public.

Section 15.41(d) (relating to general requirements) would clarify that professional experience gained while pursuing an undergraduate degree in landscape architecture or first professional degree will not be considered acceptable experience for purposes of becoming licensed. The Board adds the term "first professional degree" because some landscape architect programs are a combination of undergraduate and master's degree programs.

Section 15.54(a) (relating to registration by examination) would be deleted because it merely restates the requirement in the act. Also, subsection (b) would be amended to make the provision more readable.


Section 15.56(b) (relating to registration without examination) would be amended to provide notice to applicants for registration without examination as to what the Board is looking for by way of an interview. The Board has

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE**

DATE: November 21, 2005

SUBJECT: Final Rulemaking:
State Board of Examiners of Nursing Home Administrators
16A-6210: Biennial Renewal Fees

TO: David J. DeVries, Executive Deputy General Counsel
Office of General Counsel

FROM: Roberta L. Silver, Counsel 
State Board of Examiners of Nursing Home Administrators

There are no significant legal and policy issues presented by this regulation.

I certify that I have reviewed the final rulemaking and that the contents are correct to the best of my knowledge, information and belief. Should you have any questions, please feel free to contact me.

RLS

COMMENTATOR LIST
FINAL REGULATION
STATE BOARD OF NURSING HOME ADMINISTRATORS
16A-6210: BIENNIAL RENEWAL FEES

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**FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU**

(Pursuant to Commonwealth Documents Law)

DO NOT WRITE IN THIS SPACE

Copy below is hereby approved as to form and legality. Attorney General.

BY: _____
(DEPUTY ATTORNEY GENERAL)

Copy below is hereby certified to be a true and correct copy of a document issued, prescribed or promulgated by:

State Board of Examiners of Nursing Home
Administrators
(AGENCY)

DOCUMENT/FISCAL NOTE NO. 16A-6210

DATE OF ADOPTION: _____

BY: BS
Barry S. Stumber, II

TITLE: Chairman
(EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)

Copy below is approved as to form and legality. Executive or Independent Agencies.

BY: DAVID J. DEKRIES

FEB 10 2006

DATE OF APPROVAL

EXECUTIVE
(Deputy General Counsel
(~~Chief Counsel,~~
~~Independent Agency.~~
(Strike inapplicable
title)

[] Check if applicable
Copy not approved.
Objections attached.

[] Check if applicable. No Attorney General approval or objection within 30 day after submission.

FINAL RULEMAKING
COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS
49 PA. CODE, CHAPTER 39
STATE BOARD OF EXAMINERS OF NURSING HOME ADMINISTRATORS
BIENNIAL RENEWAL FEES
16A-6210

The State Board of Examiners of Nursing Home Administrators (Board) amends § 39.72 (relating to fees) to read as set forth in Annex A. The final-form rulemaking increases the biennial license renewal fee for nursing home administrators from \$108 to \$297.

Effective Date

The rulemaking will be effective upon final-form publication in the *Pennsylvania Bulletin*. The new fee will apply to the biennial renewal period beginning July 1, 2006.

Statutory Authority

Section 7.1(a) of the Nursing Home Administrators License Act (act) (63 P.S. § 1107.1(a)) requires the Board to increase fees by regulation to meet or exceed projected expenditures if the revenues raised by fees, fines and civil penalties are not sufficient to meet Board expenditures.

Background and Need for Amendments

The Board's current biennial license renewal fee for nursing home administrators was established by regulation at 24 Pa. B. 6564 (December 31, 1994). Under section 7.1(a) of the act, the Board is required by law to support its operations from the revenue it generates from fees, fines and civil penalties. In addition, the act provides that the Board must increase fees if the revenue raised by fees, fines and civil penalties is not sufficient to meet expenditures over a 2-year period. The biennial renewal fees fund nearly all of the Board's costs.

At Board meetings in July and December 2004, the Department of State's Bureau of Finance and Operations (BFO) presented a summary of the Board's revenue and expenses for Fiscal Years (FY) 2001-2002 through 2003-2004, and projected revenue and expenses through FY 2010-2011. The summary, presented in the following table, demonstrates that the Board must raise fees to meet or exceed projected expenditures to comply with section 7.1(a) of the act. The BFO projected a deficit of \$128,711.53 in FY 2004-2005, a deficit of \$125,711.53 in FY 2005-2006, a deficit of \$319,711.53 in FY 2006-2007, a deficit of \$331,711.53 in FY 2007-2008, a deficit of \$541,711.53 in FY 2008-2009, a deficit of \$569,711.53 in FY 2009-2010, and a deficit of \$795,711.53 in FY 2010-2011. Therefore, the BFO recommended that the Board raise fees to meet or exceed projected expenditures, in compliance with section 7.1(a) of the act.

16A-6210
Preamble Biennial Fees
December 20, 2005

2001-2002 beginning balance	178,883.59
FY 01-02 revenue	44,149.67
Adjust. for prior year expenses	4,265.43
FY 01-02 expenses	164,000.00
Remaining balance	54,767.83
2002-2003 beginning balance	54,767.83
FY 02-03 revenue	249,850.03
Prior year returned funds	0.00
FY 02-03 expenses	182,000.00
Remaining balance	122,617.86
2003-2004 beginning balance	122,617.86
FY 03-04 revenue	229,599.72
Prior year returned funds	0.00
FY 03-04 expenses	235,000.00
Remaining balance	117,217.58
2004-2005 beginning balance	117,217.58
FY 04-05 projected revenue	60,000.00
Prior year returned funds (estimated)	20,000.00
Adjust. for prior year expenses (estimated)	85,929.11
FY 04-05 projected expenses	240,000.00
Remaining balance	(128,711.53)
2005-2006 beginning balance	(128,711.53)
FY 05-06 projected revenue	250,000.00
FY 05-06 projected expenses	247,000.00
Remaining balance	(125,711.53)
2006-2007 beginning balance	(125,711.53)
FY 06-07 projected revenue	60,000.00
FY 06-07 projected expenses	254,000.00
Remaining balance	(319,711.53)
2007-2008 beginning balance	(319,711.53)
FY 07-08 projected revenue	250,000.00
FY 07-08 projected expenses	262,000.00
Remaining balance	(331,711.53)
2008-2009 beginning balance	(331,711.53)

FY 08-09 projected revenue	60,000.00
FY 08-09 projected expenses	270,000.00
Remaining balance	(541,711.53)
2009-2010 beginning balance	(541,711.53)
FY 09-10 projected revenue	250,000.00
FY 09-10 projected expenses	278,000.00
Remaining balance	(569,711.53)
2010-2011 beginning balance	(569,711.53)
FY 10-11 projected revenue	60,000.00
FY 10-11 projected expenses	286,000.00
Remaining balance	(795,711.53)

As the previous table indicates, the BFO estimates that at the close of FY 2004-2005, the Board's expenses will exceed its revenues by \$128,711.53. The BFO anticipates that in subsequent fiscal years, the Board's expenses will continue to exceed its revenues. Without an increase, the projected deficit in FY 2010-2011 would be \$795,711.53.

The Board's review of its actual and projected expenses for the past 5 years revealed significant shortfalls in the areas of enforcement and investigation, legal office expenses and legislative and regulatory analysis. For example, despite annual increases in projected expenses, actual enforcement and investigation costs increased \$13,242.21 from fiscal year 2002-2003 to 2003-2004. The actual expenses for the legal office and legislative and regulatory analysis increased \$18,879.37 and \$7,975.38, respectively, from FY 2002-2003 to 2003-2004. Overall increased expenditures in these program areas have resulted from a steady increase in the number of complaints opened each year relating to nursing home administrators and therefore greater investigative, enforcement and legal activity. At the same time, the Board's licensee population has declined by 400 licensees over the past 5 years, decreasing the Board's biennial revenue. The BFO anticipates that the proposed new biennial renewal fees will enable the Board to recapture the current deficit and meet its estimated expenditures for the next 10 years. Biennial renewal fees were last raised from \$85 to \$108 by rulemaking finalized on December 31, 1994. The 1994 increase was first applied to the 1996 biennial renewal.

In determining the fee, the Board also considered the renewal fees charged to nursing home administrators in the six surrounding states. The Board found that the proposed increase to \$297 would be lower than two fees and higher than four fees charged by contiguous states, and therefore consistent with the renewal fees charged in the surrounding states.

Comment and Review of Proposed Rulemaking

Publication of proposed rulemaking at 35 Pa.B. 2402 (April 23, 2005) was followed by a 30-day public comment period during which the Board received seventeen comments. The Pennsylvania Health Care Association (PHCA) and The Pennsylvania Association of County Affiliated Homes (PACAH) were among those who commented. The rest of the comments were from individual licensees. In accordance with the Regulatory Review Act, the Independent Regulatory Review Commission (IRRC), the House Professional Licensure Committee (HPLC) and the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) reviewed the proposed rulemaking. The HPLC and SCP/PLC had no objections, suggestions or comments. The following is the Board's response to IRRC's comments and the public comments.

In general, all of the public commentators believe the biennial increase is excessive. Specifically, IRRC questioned why it was necessary to increase the fee to a level that goes beyond erasing the current deficit to meet projected expenditures over a decade and urged the Board to consider raising fees only in the amount needed to resolve deficits in the short term. The reason for developing a renewal fee to erase the current deficit and meet projected expenditures over a decade is because the process to obtain a fee increase is labor intensive, costly and can take up to 2 years to get approved. The Board considered several fee increase options to ensure that the most reasonable fee increase would erase the current deficit and carry a modest balance to cover any unplanned expenses such as a large legal case that could have the potential to deplete funds quickly. Based on the options presented, it was determined that the 175% fee increase would generate the revenue needed to erase the current deficit and meet the Board's estimated expenditures in the near future.

IRRC also suggested that, as an alternative to the proposed regulation, fee increases could be phased in over a specific timeframe. IRRC noted that this approach would have a less drastic economic impact on licensees and would allow the Board to adapt to changes in the number of licensees and enforcement activity. PHCA also suggested phasing in the increase over a period of eight to ten years. However, section 7.1(a) of the act specifically states that "[i]f the revenues generated by fees, fines and civil penalties imposed pursuant to this act are not sufficient to match expenditures over a two-year period, the board shall increase those fees by regulation, subject to review in accordance with the Regulatory Review Act, such that the projected revenues will meet or exceed projected expenditures." The 175% fee increase will meet this mandate and the Board's operations will not be interrupted. If a graduated fee increase was implemented, it would take several years for the Board to recover the projected deficit and generate sufficient revenue to meet estimated expenditures in the future. This could cause the Board to cease operations and therefore would pose a threat to the public's health, safety and welfare.

IRRC also commented that the Board should identify the financial and economic impacts of the regulation on individual licensees. In this regard, IRRC urged the Board to consider the potential impacts on the profession and the facilities that licensees administer, given the recent decline in the

number of licensees, and also urged the Board to consider whether, if the decline continues, a steep fee increase will have a negative impact on long-term care facilities and their ability to maintain and protect the health, safety and welfare of their residents. As IRRC recognized in its comments, a number of licensees who commented contend that the increase will be a significant deterrent for licensees to renew and stay in the profession and will dissuade newcomers from seeking licensure and entry into the profession. The only financial and economic impact that the Board can identify with certainty is that nursing home administrators will be required to pay \$189 more than they currently pay to renew their licenses. The Board cannot speculate on whether the fee increase will have such a deterrent effect on licensees and potential licensees that it will ultimately have a negative impact on long-term care facilities and their ability to maintain and protect the health, safety and welfare of their residents. Nevertheless, the Board believes that the residents of long-term care facilities are at greater risk of harm if the Board ceases to operate than they are by the potential ramifications of the fee increase.

One of the licensees who commented noted that the proposed fee is higher than four contiguous states and lower than two others. This commentator questioned whether the average NHA wages have been reviewed and compared in the two lower states and whether the number of nursing homes in those states has been compared with Pennsylvania. The Board has not performed such a review or comparison because these considerations are not relevant to the fee increase. Under section 7.1(a) of the act, the only consideration relevant to the fee increase is whether the revenue raised by fees, fines and civil penalties is sufficient to meet expenditures over a 2-year period.

Description of Proposed Amendments

Based upon the above expense and revenue estimates provided to the Board, the Board is amending § 39.72 (relating to fees) to increase the fee for biennial renewal of licenses for nursing home administrators from \$108 to \$297.

Fiscal Impact

The rulemaking will increase the biennial renewal fee for nursing home administrators. The rulemaking should have no other fiscal impact on the private sector, the general public or political subdivisions.

Paperwork Requirements

The rulemaking will require the Board to alter some of its forms to reflect the new biennial renewal fee; however, it should not create additional paperwork for the private sector.

Sunset Date

The act requires that the Board monitor its revenue and costs on a fiscal year and biennial basis. Therefore, no sunset date has been assigned.

Regulatory Review

Under Section 5(a) of the Regulatory Review Act, (71 P.S. § 745.5(a)), on April 23, 2005, the Board submitted a copy of the notice of proposed rulemaking, published at 35 Pa B. 2402, to IRRC and the Chairpersons of the HPLC and the SCP/PLC for review and comment.

Under Section 5(c) of the Regulatory Review Act, IRRC, the HPLC and the SCP/PLC were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Board has considered all comments from IRRC, the HPLC, the SCP/PLC and the public.

Under Section 5.1(j.2) of the Regulatory Review Act (71 P.S. § 745.5a(j.2)), on _____, the final-form rulemaking was approved by the HPLC. On _____, the final-form rulemaking was deemed approved by the SCP/PLC. Under Section 5.1(e) of the Regulatory Review Act, IRRC met on _____, and approved the final-form rulemaking.

Contact Person

Further information may be obtained by contacting Christina Stuckey, Administrative Assistant, State Board of Examiners of Nursing Home Administrators, P.O. Box 2649, Harrisburg, PA 17105-2649 (cstuckey@state.pa.us).

Findings

The Board finds that:

- (1) Public notice of the proposed rulemaking was given under Sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202) and the regulations promulgated thereunder at 1 Pa. Code §§ 7.1 and 7.2.
- (2) A public comment period was provided as required by law and all comments were considered.
- (3) This final rulemaking does not enlarge the purpose of the proposed rulemaking published at 35 Pa.B. 2402 (April 23, 2005).

- (4) This final rulemaking is necessary and appropriate for administration and enforcement of the authorizing act identified in Part B of this Preamble.

Order

The Board, acting under its authorizing statutes, orders that:

- (1) The regulations of the Board, 49 Pa. Code, Chapter 39, are amended by amending § 39.72 to read as set forth in Annex A.
- (2) The Board shall submit this order and Annex A to the Office of General Counsel and to the Office of Attorney General as required by law.
- (3) The Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.
- (4) This order shall take effect on publication in the *Pennsylvania Bulletin*.

BARRY S. RAMPER, II,
Chairperson

ANNEX A

**TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS
PART I. DEPARTMENT OF STATE
SUBPART A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS
CHAPTER 39. STATE BOARD OF EXAMINERS OF
NURSING HOME ADMINISTRATORS**

* * *

RENEWAL

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§ 39.72. Fees.

The following is a schedule of fees charged by the Board:

Biennial renewal of nursing home administrators license..... \$[108]297

* * *



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS
STATE BOARD OF NURSING HOME ADMINISTRATORS

Post Office Box 2649
Harrisburg, Pennsylvania 17105-2649
(717) 783-7155

February 23, 2006

The Honorable John R. McGinley, Jr., Chairman
INDEPENDENT REGULATORY REVIEW COMMISSION
14th Floor, Harristown 2, 333 Market Street
Harrisburg, Pennsylvania 17101


Re: Final Regulation
State Board of Nursing Home Administrators
16A-6210: Biennial Renewal Fees

Dear Chairman McGinley:

Enclosed is a copy of a final rulemaking package of the State Board of Nursing Home Administrators pertaining to biennial renewal fees.

The Board will be pleased to provide whatever information the Commission may require during the course of its review of the rulemaking.

Sincerely,


Barry S. Rampler, ~~is~~ ^{is} Chairperson
State Board of Nursing Home Administrators

BSR/RLS/sb

Enclosure

cc: Basil L. Merenda, Commissioner
Bureau of Professional and Occupational Affairs
Albert H. Masland, Chief Counsel
Department of State
Joyce McKeever, Deputy Chief Counsel
Department of State
Cynthia Montgomery, Regulatory Counsel
Department of State
Gerald S. Smith, Senior Counsel in Charge
Department of State
Roberta L. Silver, Counsel
State Board of Nursing Home Administrators
State Board of Nursing Home Administrators

**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT**

I.D. NUMBER: 16A-6210

SUBJECT: State Board of Examiners of Nursing Home Administrators: Biennial Renewal Fees

AGENCY: DEPARTMENT OF STATE

TYPE OF REGULATION

Proposed Regulation

X Final Regulation

Final Regulation with Notice of Proposed Rulemaking Omitted

120-day Emergency Certification of the Attorney General

120-day Emergency Certification of the Governor

Delivery of Tolled Regulation

a. With Revisions b. Without Revisions

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
2/23/06	<i>Sandra J. Harper</i>	HOUSE COMMITTEE ON PROFESSIONAL LICENSURE
<hr/>		
2/23/06	<i>Mary Walmer</i>	SENATE COMMITTEE ON CONSUMER PROTECTION & PROFESSIONAL LICENSURE
<hr/>		
2/23/06	<i>St. Gelner</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
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		ATTORNEY GENERAL (for Final Omitted only)
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		LEGISLATIVE REFERENCE BUREAU (for Proposed only)
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February 10, 2006