

# Regulatory Analysis Form

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INDEPENDENT REGULATORY  
REVIEW COMMISSION

(1) Agency

Department of State  
Bureau of Professional and Occupational Affairs  
State Board of Examiners of Nursing Home Administrators

(2) I.D. Number (Governor's Office Use)

16A-6210

IRRC Number: 2469

(3) Short Title

Biennial Renewal Fees

(4) PA Code Cite

49 Pa. Code §39.72

(5) Agency Contacts & Telephone Numbers

Primary Contact: Martha H. Brown, 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)

☒ Proposed Rulemaking  
☐ Final Order Adopting Regulation  
☐ Final Order, Proposed Rulemaking  
☐ Omitted

(7) Is a 120-Day Emergency Certification Attached?

☒ No  
☐ Yes: By the Attorney General  
☐ Yes: By the Governor

(8) Briefly explain the regulation in clear and nontechnical language.

The regulation amends the biennial renewal fees for the State Board of Examiners of Nursing Home Administrators (Board) by revising the biennial renewal fee for nursing home administrator licensees so that projected revenues will meet or exceed projected expenditures. 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 regulatory amendments are adopted 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 statute to fix fees by regulation and to increase fees by regulation if they are not sufficient to meet or exceed projected expenditures. Section 7.1(a) of the act (63 P.S. § 11071.(a)) requires the Board to set fees to raise sufficient revenue to meet expenditures.

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

It is anticipated that without raising fees the Board will realize a deficit of \$128,711.53 in fiscal year 2004-2005 and \$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.

(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 nurse 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.

The reconciliation of its budget is an administrative function for which public input is not required. In developing and drafting the regulation, the Board considered the fee as both required by law and the least restrictive means of covering the costs of services required to be performed by the Board.

(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. Because the Board must charge fees which reflect its annual costs in providing services to licensees, implementing the regulation will produce no identifiable costs or savings to state government.

### 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	2005-2006	2006-2007	2007-2008	2008-2009	2009-2010
<b>SAVINGS:</b>	N/A	N/A	N/A	N/A	N/A	N/A
Regulated Community						
Local Government						
State Government						
Total Savings						
<b>COSTS:</b>						
Regulated Community	0	\$345,114	0	\$345,114	0	\$345,114
Local Government						
State Government						
Total Costs						
<b>REVENUE LOSSES:</b>	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 (2001-2002)	FY- 2 (2002-2003)	FY- 1 (2003-2004)	Current FY
State Board of Examiners of Nursing Home Administrators	\$ 203,857.15	\$ 208,123.21	\$ 208,123.21	\$ 215,000.00*
				* Budgeted

(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 meet Board expenses.

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.

No alternative regulatory schemes were considered. See Question 21.

### 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.

No federal licensure standards apply.

(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.

This regulation will have no effect on other regulations of the Board or other state agencies.

(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](http://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 is 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 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.

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

(Pursuant to Commonwealth Documents Law)

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REVIEW COMMISSION

DO NOT WRITE IN THIS SPACE

# 2469

Copy below is hereby approved as to  
form and legality. Attorney General.BY: [Signature]  
(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)Copy below is approved as  
to form and legality.  
Executive or Independent  
AgencyBY: [Signature]

MAR 18 2005

DATE OF APPROVAL

DOCUMENT/FISCAL NOTE NO. 16A-6210

DATE OF ADOPTION: \_\_\_\_\_

BY: [Signature] Chair  
Barry S. Rappaport, IITITLE: Chairman  
(EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)

2.24.05

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.

PROPOSED 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) proposes to amend 49 Pa. Code §39.72 (relating to fees) to read as set forth in Annex A. The proposed regulation would increase the biennial license renewal fee for nursing home administrators from \$108 to \$297.

### **Effective Date**

The new fees will be effective on final 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 on December 31, 1994. (See 24 Pa. B. 6564). Under section 7.1(a) of the act (63 P.S. §1107.1(a)), 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 2001-2002 through 2003-2004, and projected revenue and expenses through 2010-2011. The BFO projected a deficit of \$128,711.53 in fiscal year 2004-2005, a deficit of \$125,711.53 in fiscal year 2005-2006, a deficit of \$319,711.53 in fiscal year 2006-2007, a deficit of \$331,711.53 in fiscal year 2007-2008, a deficit of \$541,711.53 in fiscal year 2008-2009, a deficit of \$569,711.53 in fiscal year 2009-2010, and a deficit of \$795,711.53 in fiscal year 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 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 fiscal year 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 at least 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.

#### **Description of Proposed Amendments**

The amendments would increase the biennial renewal fee for all nursing home administrators from \$108 to \$297. The Bureau of Finance and Operations 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 new fees will affect a total licensee population of approximately 1,826 nursing home administrators. The Board estimates these fees will generate \$572,322.00 in biennial revenue. If the proposal is effectuated for the July 1, 2006 renewal, the revenue would be used to recapture projected deficits totaling \$795,711.53 by the end fiscal year 2010-2011 and to fund anticipated expenditures from fiscal year 2005-2006 through at least fiscal year 2010-2011.

#### **Compliance with Executive Order 1996-1**

The requirements of Executive Order 1996-1 (February 6, 1996) for public input are not applicable to regulations relating solely to reconciliation of the Board's budget through increases in biennial renewal fees.

#### **Fiscal Impact**

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

### **Paperwork Requirements**

The proposed regulation will require the Board to alter some of its forms to reflect the new biennial renewal fee; however, the proposed regulations 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 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 shall 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, Pennsylvania 17105-2649, within 30 days following publication of this proposed rulemaking in the Pennsylvania Bulletin. Please reference No. 16A-6210 (Biennial Renewal Fees) when submitting comments.

**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

\* \* \*

## 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)
<b>FOR BIENNIAL CYCLE 7/01/05-6/30/06</b>	
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
<b>Estimated ending balance on 6/30/06:</b>	<b>196,610.47</b>
<b>FOR BIENNIAL CYCLE 7/01/06-6/30/07</b>	
Estimated non-renewal revenue:	30,000.00
Estimated renewal revenue @ above rates:	83,000.00
Estimated expenditures:	254,000.00
<b>Estimated ending balance on 6/30/07:</b>	<b>55,610.47</b>

### 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.



**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**

**March 29, 2005**

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

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

Dear Chairman McGinley:

Enclosed is a copy of a proposed 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,

A handwritten signature in black ink, appearing to read "Barry S. Ramper".

Barry S. Ramper, M.D., NEHA, Chairperson  
State Board of Nursing Home Administrators

BSR/RLS/law

Enclosure

cc: Albert H. Masland, Chief Counsel  
Department of State  
Basil L. Merenda, Commissioner  
Bureau of Professional and Occupational Affairs  
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

# 2469

**TYPE OF REGULATION**

X Proposed Regulation

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

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**FILING OF REGULATION**

DATE	SIGNATURE	DESIGNATION
3/21/05	<i>Sandra J. Harper</i>	HOUSE COMMITTEE ON PROFESSIONAL LICENSURE
3/29/05	<i>Mary Walmer</i>	SENATE COMMITTEE ON CONSUMER PROTECTION & PROFESSIONAL LICENSURE
3/21/05	<i>John D. Hoff</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL (for Final Omitted only)
7/25/05	<i>Marya Garcia</i>	LEGISLATIVE REFERENCE BUREAU (for Proposed only)

March 21, 2005