

Agenda Item # 12.



STATE AND CONSUMER SERVICES AGENCY • ARNOLD SCHWARZENEGGER, GOVERNOR
BOARD OF VOCATIONAL NURSING & PSYCHIATRIC TECHNICIANS
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DATE: May 4, 2010

TO: Board Members

FROM: Teresa Bello-Jones
Executive Officer

SUBJECT: **Regulatory Report & Fiscal Impact – Fee Regulations**

STATEMENT OF ISSUES

On February 18, 2010, the Board of Vocational Nursing and Psychiatric Technicians' (Board) approved the *regulatory* proposal to increase the examination application, retake application and dishonored check fees. The increase in fees was needed to maintain the fiscal solvency of the Board.

On April 8, 2010, the State & Consumer Services Agency (Agency) returned the Board's regulatory fee change proposal *without action*. Without Agency and the Department of Finance's approval, the Board cannot file its regulations with the Office of Administrative Law (OAL). As a result, the additional revenue requested in the proposed fee change will not be received on July 1, 2010 as planned.

Notwithstanding the above, the Board's efforts to obtain an author to raise its *statutory* fee ranges have been unsuccessful. On April 6, 2010, Assembly Bill (AB) 2484 was pulled due to opposition from two professional nursing organizations. Unless the fee ranges currently specified in Business & Professions Code, sections 2895 and 4548, are amended, the Board does not have statutory authority to raise any of the fees in its primary revenue categories (i.e., initial license, biennial renewal, delinquent renewal, application and examination retake) in the future.

Accordingly, the purpose of this report is to delineate the critical need for a "regulatory" as well as "statutory" fee change and the approaching fund deficits impacting the Vocational Nursing (VN) and Psychiatric Technician (PT) Programs.

BUDGET CHANGE PROPOSALS

The Department of Consumer Affairs (DCA) spearheaded two major enforcement reforms, Retroactive Fingerprinting in Fiscal Year (FY) 2009/10 and the Consumer Protection Enforcement Initiative (CPEI) in FY 2010/11. Both of these programs strengthen the Board's consumer protection mandates by requiring retroactive fingerprinting of 55,000 individuals licensed prior to January 1, 1998 and by allowing health care boards to

reorganize investigative resources to reduce enforcement processing times. The intent of the CPEI is to streamline and standardize the complaint intake/analysis, reorganize investigative resources, and decrease the average processing time for complaint intake, investigation, and prosecution from three years to 12-18 months by FY 2012/13. To implement these enforcement mandates, however, the VN and PT Programs must have sufficient funds available to cover its costs.

In addition, for FY 2010/11, the VN Program requested four (4) additional positions to address the 108% increase in the number of students attending VN Programs statewide and the commensurate increase in the number of applications received for examination and licensure.

The VN Program receives over 20,000 applications annually. The VN Program’s licensing backlog was over 10 weeks old and growing. In September 2009, the Board received an exemption to retain fourteen (14) “part-time” retired annuitants (RA) to assist with the backlogs. RAs can only work 120 days per year or about 10 days per month. Due to the state’s economic crisis, it is routine for state agencies to be directed to furlough all of its RAs at any given time throughout the year. As such, the VN Program needs permanent staff to address the ongoing, increased workload.

Effective July 1, 2009 and proposed for July 1, 2010, the following budget change proposals (BCPs) are underway or pending approval by the Legislature:

1. Retroactive Fingerprinting (Approved. Effective 7/1/2009)
2. Consumer Protection Enforcement Initiative (CPEI) – Investigations (Pending. Effective 7/1/2010)
3. Consumer Protection Enforcement Initiative -- Information Technology (IT) (Pending. Effective 7/1/2010)
4. Licensing Backlog (Pending. Effective 7/1/2010)

Table 1 shows the cost impact for these consumer protection and job creation initiatives:

Table #1 – Budget Change Proposals				
	FY 2009/10	FY 2010/11	FY 2011/12	FY 2012/13
VN Program:				
Retroactive Fingerprinting	\$2,068,000	\$3,260,000	\$1,642,000	\$1,642,000
CPEI – Investigation	n/a	\$1,168,000	\$1,276,000	\$1,276,000
CPEI – Info. Technology	Redirect Existing IT Project Funding		\$6,000	\$58,000
Licensing Backlog	n/a	\$258,000	\$229,000	\$229,000
Annual Cost Impact:	\$2,068,000	\$4,686,000	\$3,153,000	\$3,205,000
PT Program:				
Retroactive Fingerprinting	\$518,000	\$896,000	\$398,000	\$398,000
CPEI – Investigation	n/a	\$230,000	\$243,000	\$243,000
CPEI – Info. Technology	Redirect Existing IT Project Funding		\$1,000	\$7,000
Annual Cost Impact:	\$620,000	\$1,126,000	\$642,000	\$648,000

Attorney General (AG) & Office of Administrative Hearing (OAH) Costs -- The above CPEI BCPs do not include the increased costs associated with the AG and OAH

services. As such, the Governor's budget proposal also includes budget bill language that would allow the Department of Finance to augment the healing art boards' budgets for Attorney General work by up to 20 percent per board without notifying the Legislature. Therefore, the actual cost impact of the CPEI effort will increase accordingly.

REGULATORY FEE CHANGE PROPOSALS

To ensure sufficient funding was available to implement retroactive fingerprinting, an emergency fee regulation was approved by DCA, Agency and OAL effective July 1, 2009. The following fee changes occurred in 2009:

	<u>VN Program</u>	<u>PT Program</u>
➤ Initial License	From \$120 to \$150	From \$200 to \$300
➤ <i>Biennial</i> Renewals	From \$120 to \$150	From \$200 to \$300
➤ Delinquent Renewals	From \$60 to \$75	From \$100 to \$150

With the implementation of the CPEI and the job creation initiatives in 2010, the Board needs additional funds to remain solvent. As such, on February 18, 2010, the Board approved the regulatory proposal to amend the following fee categories:

	<u>VN Program</u>	<u>PT Program</u>
➤ Examination Applications	From \$75 to \$150	From \$100 to \$150
➤ Retake Applications	From \$75 to \$150	From \$100 to \$150
➤ Dishonored Checks	From \$10 to \$25	From \$10 to \$25

This **regulatory** fee change was to become effective July 1, 2010.

On February 24, 2010, the DCA Budget Office signed off on the Economic & Fiscal Impact Statement (Form 399) that must accompany proposed regulations. On February 26, 2010, the Board's rulemaking file and Form 399 was filed with the DCA. On March 12, 2010, the file was approved by the DCA Director. On March 15, 2010, the file was transmitted to Agency for approval. On April 8, 2010, Agency returned the file without taking any action. **Without approval from Agency and the Department of Finance, the Board cannot proceed with its fee regulations as planned.** The DCA Director continues to work with Agency on this critical request. The Board does not know if and when this regulatory proposal will be approved by Agency and the Department of Finance.

STATUTORY FEE RANGE CHANGE PROPOSALS

In 2009, due to implementation of retroactive fingerprinting, the DCA Budget Office concurred that the Board needed to find an author for its statutory fee range change proposal. The Board contacted several legislators in 2009 and could not find anyone to author this range change proposal.

On February 19, 2010, AB 2484 was introduced to amend the VN and PT Programs' statutory fee ranges. Unfortunately, on April 6, 2010, due to written opposition from two professional nursing organizations, the hearing was canceled at the request of the author. The legislator is no longer willing to author this proposal.

FUND CONDITIONS

At this point, without a regulatory and statutory fee change, the DCA Budget Office projects that both the VN and PT Programs face a fund deficit in FY 2011/12. Table 2 shows the “projected” Fund Condition reserve amounts for both programs. If a **regulatory** fee change was approved and effective October 1, 2010, the VN Program would remain solvent through FY 2012/13. Conversely, even if a fee change was approved for the PT Program, a “statutory” fee increase would also be required to avoid a fund deficit in FY 2011/12 (see Attachments A & B -- Analysis of Fund Conditions).

Table #2 – Fund Condition (Months in Reserve*)				
Program	2009/10	2010/11	2011/12	2012/13
VN Program:				
A. Without Fee Change	4.4	0.6	-2.5 (-\$2,035,000)	-4.2 (-\$3,540,000)
B. With “Regulatory” Fee Change eff. 7/1/2010	4.4	2.0	0.7	0.4
C. With “Regulatory” Fee Change eff. 10/1/2010	4.4	1.7	0.3	0.0
PT Program:				
A. Without Fee Change	5.7	0.9	-3.2 (-\$594,000)	-5.8 (-\$1,108,000)
B. With “Regulatory” Fee Change eff. 7/1/2010	5.7	1.2	-2.5 (-\$468,000)	-4.8 (-\$919,000)
C. With “Regulatory” Fee Change eff. 10/1/2010	5.7	1.1	-2.6 (-\$484,000)	-4.9 (-\$935,000)
*Months in Reserve = Equates to the amount of money which is projected to remain in the fund account after annual expenditures. The amount of money is then converted to the equivalent number of operating months that is projected for the next fiscal year.				

RECOMMENDATIONS

There is no guarantee that the Board's "regulatory" fee proposal will be approved by Agency and the Department of Finance anytime soon. In addition, without assistance from the DCA, Agency and the Department of Finance, the Board's ability to obtain a statutory fee range change next year does not appear likely.

To mitigate the impending fund deficits for both programs, Board staff recommends the following actions:

1. Continue to pursue the approval of the Board's fee regulation proposal.
2. Continue to seek an author for a statutory fee range change proposal.
3. Take immediate steps in FY 2010/11 to reduce its overall expenditures. These steps may include:
 - Delaying implementation of the CPEI until sufficient funds are available.
 - Postponing implementation of the PT Occupational Analysis.
 - Reducing programmatic spending in all areas.

Enclosures:

Attachment A: VN Program – Analysis of Fund Condition

Attachment B: PT Program – Analysis of Fund Condition

(5/4/2010)

ATTACHMENT A-1

ATTACHMENT A-2

ATTACHMENT A-3

ATTACHMENT B-1

ATTACHMENT B-2

ATTACHMENT B-3