Consideration of Adoption of Amendments to 22 Tex. Admin. Code §223.1, Pertaining to Fees, Including Written Comments Received and Results of Public Hearing, if any

Background: Proposed amendments to §223.1 were approved by the Board at its April 2019 meeting for submission to the Texas Register for public comment. The amendments were designed to address budgetary concerns, based upon the anticipated actions of the Texas Legislature. At that time, it appeared the Board would be required to raise revenue sufficient to cover the Board’s base budget, $985,206 in exceptional items, overhead (health benefits and retirement), and additional costs associated with several pending bills [House Bill (HB) 912, HB 2213, HB 927, HB 2174/Senate Bill 1233, and the Texas Board of Pharmacy rider, to fund the prescription monitoring program]. The Board approved the proposal of the amendments, granting discretion to Staff to make adjustments as necessary to address the final legislation.

The legislature ended up approving the Board’s request for $777,236 in exceptional items (temporary staffing costs, nurse salary adjustments, and executive director salary increase), in addition to its base budget of $28,271,031. The Board was required to raise enough revenue to cover the Board’s base budget, the approved exceptional items, and the costs associated with the implementation of HB 2174 (effective September 1, 2019).

HB 2174 relates to the issuance of electronic prescriptions for controlled substances and requires licensing agencies to develop a waiver process for practitioners who are unable to issue electronic prescriptions for statutorily defined reasons. There are currently 25,410 advanced practice registered nurses with prescriptive authorization in Texas that may be affected by the bill’s new requirements. The Board experiences an approximate 6.6% to 20.7% increase in the number of new prescriptive authorizations issued each year. Based upon the potential volume of waivers the Board may receive as a result of the requirements of HB 2174, Staff anticipated that one new additional staff member was necessary to review and respond to these waiver requests. The estimated costs associated with an additional staff member are $59,629.50 each fiscal year.

Based upon Board direction at its April meeting, Staff adjusted the proposed amendments to address the revenue requirements approved by the legislature. As a result, licensed vocational nurse renewal fees increased by $3, making the new renewal fee for an LVN $45 each biennium; registered nurse renewal fees increased by $3, making the new renewal fee for an RN $68 each biennium; and advanced practice registered nurse renewal fees increased by $4, making the new renewal fee for an APRN $54 each biennium.

The amendments were published in the Texas Register on June 14, 2019 and the comment period ended on July 15, 2019. The Board did not receive any comments on the
proposal. The adopted amendments will be published in the *Texas Register* on August 2, 2019, and will become effective August 6, 2019.
Consideration of Proposed Amendments to 22 Tex. Admin. Code §223.1, Pertaining to Fees

Background: In its budget request for the 2020-2021 biennium, the Board requested $985,206 in exceptional items. If approved by the Legislature, all or in part, the Board will be required to raise enough revenue to cover the Board’s base budget, exceptional items, and other costs associated with legislation that is passed and includes a fiscal note. With or without a contingency revenue rider, the Board will be required to assess or increase fees in an amount sufficient to generate the current base budget, $985,206 in exceptional items, overhead (which includes health benefits and retirement), and other costs associated with legislative actions that include fiscal obligations during the 2020-21 biennium.

1. Base Budget – the current fee structure supports the revenue needed to fund the Board’s base budget and overhead that includes health benefits and retirement.

2. Exceptional Items - the Board requested up to $985,206 in exceptional items. If approved, the Board will need to raise LVN and RN fees by $3 each per biennium.

3. Other Legislation -
   A. House Bill 912 - Expedited APRN Out-of-State Licensing. Would allow the Board to hire 2 staff members, and the revenue requirement would be $155,859 per fiscal year. If approved, would require up to $80 per APRN initial out-of-state application (estimated 2,000 out-of-state applications per fiscal year). This fee for expedited service would only be charged to out-of-state APRNs and would be on top of paying the APRN initial credential fee of $100 for a total of $180 for an expedited out-of-state APRN application.

   B. House Bill 2213 - Expedited LVN/RN Licensure for Military Spouses, Active Duty, and Veterans. Would allow the BON to hire 1 staff member, and the revenue requirement would be $57,360 per fiscal year. If approved, would require a $1 renewal increase for LVNs (estimated 50,000 LVN renewals per fiscal year).

   C. House Bill 927 - APRN Practice in Rural Counties. Would allow the Board to hire 1 staff member, and the revenue requirement would be $57,360 per fiscal year. If approved, would require a $4 per APRN renewal increase (estimated 14,000 APRN renewals per fiscal year). If approved, an APRN would pay the RN renewal fee and the new APRN renewal fee.
D. House Bill 2174/Senate Bill 1233 - Controlled Substance Prescriptions Waiver. Would allow the Board to hire 1 staff member, and the revenue requirement would be $57,360 per fiscal year. If approved, would require a $4 per APRN renewal increase (estimated 14,000 APRN renewals per fiscal year). If approved, an APRN would pay the RN renewal fee and the new APRN renewal fee.

E. Texas Board of Pharmacy Rider - Funding for Statewide integration with NarxCare and Clinical Alerts for the Prescription Monitoring Program. Would require the Board to collect an additional $297,512 per fiscal year. If approved, would require a $22 APRN prescriptive authority renewal surcharge increase (estimated 14,000 APRN renewals per fiscal year). If approved, an APRN would pay the RN renewal fee, APRN renewal fee and the prescriptive authority renewal surcharge.

In order to meet the revenue requirements stated above, the Board has determined that it will be necessary to increase its renewal fees. The Board's current renewal fee for licensed vocational nurses is $42 each biennium; $65 for registered nurses each biennium; and $115 each biennium for advanced practice registered nurses.

The proposed amendments in Attachment “A” will increase the maximum renewal fee for LVNs by $4, RNs by $3, and APRNs by $30; and out-of-state APRN applicants by $80. If the maximum fee increases are implemented the exceptional items and all pieces of legislation pass), this would result in a new renewal fee of $46 for licensed vocational nurses, $68 for registered nurses, and a maximum of $163 for advanced practice registered nurses and $180 for advance practice registered nurse out-of-state applications. The Board anticipates that these fee increases in the renewal fee for each nursing license, coupled with the Board's normal revenue growth, will be sufficient to meet the requirements of HB 1 and passed legislation. The proposed amendments are necessary to effectuate these fee increases by September 1, 2019.

**Board Action:** Move to approve the proposed amendments to 22 Tex. Admin. Code §223.1, pertaining to *Fees*, as set out in Attachment “A”, with authority for the General Counsel to make editorial changes as necessary to clarify rule and Board intent and to comply with the formatting requirements of the *Texas Register*, if the proposal of the amendments are determined by Board Staff to be necessary to address budgetary concerns, based upon the final actions of the Texas Legislature. If no negative comments and no request for a public hearing are received, move to adopt the proposed amendments to 22 Tex. Admin. Code §223.1, pertaining to *Fees*, as proposed.
Attachment “A”

(a) The Texas Board of Nursing has established reasonable and necessary fees for the administration of its functions.

1. Examination: $75
2. Endorsement: $161;
3. Licensure renewal (each biennium):
   (A) Registered Nurse (RN): $68 [$65];
   (B) Licensed Vocational Nurse (LVN): $46 [$42];
4. Reactivating from inactive status:
   (A) less than four years--$10 plus current renewal fee;
   (B) more than four years--$20 plus current renewal fee;
5. Late fee for reactivation from delinquent status:
   (A) less than 90 days--$60 plus current licensure renewal fee;
   (B) more than 90 days--$120 plus current licensure renewal fee;
6. Approval of new nursing education programs: $2,500;
7. Bad checks: $30;
8. Advanced Practice Nurse Initial Credentials: $100;
9. Advanced Practice Nurse Expedited Out of State Application: $80
10. Declaratory order of eligibility: $150;
11. Eligibility determination: $150;
12. Advanced Practice Nurse renewal: ($58) [$50];
13. Initial Prescriptive Authority: $50;
14. Outpatient anesthesia registry renewal: $35;
(15)[(14)] outpatient anesthesia inspection and advisory opinion: $625;

(16)[(15)] fee for Federal Bureau of Investigations (FBI) and Department of Public Safety (DPS) criminal background check for licensees, initial licensure applicants and endorsement applicants as determined by fees imposed by the Criminal Justice Information Services (CJIS) Division and the Texas Department of Public Safety;

(17)[(16)] Disciplinary monitoring fees as stated in a Board order;

(18)[(17)] Nursing Jurisprudence Examination fee: not to exceed $25;

(19)[(18)] approval of remedial education course: $300 per course;

(20)[(19)] renewal of remedial education course: $100 per course;

(21)[(20)] approval of a nursing education program outside Texas' jurisdiction to conduct clinical learning experiences in Texas: $500; and

(22)[(21)] Prescriptive Authority Renewal Surcharge: Not to exceed ($37) ($15).

(b) All fees are non-refundable. More than one fee listed herein may apply in a given situation.