

**WEST VIRGINIA LEGISLATURE**  
*Performance Evaluation and Research Division*

1900 Kanawha Blvd. East  
Building 1, Room W-314  
Charleston, WV 25305-0610  
(304) 347-4890

**John Sylvia**  
**Director**



August 25, 2024

The Honorable Jack David Woodrum, Chair  
West Virginia Senate  
Room 214W, Bldg. 1  
1900 Kanawha Blvd. E.  
Charleston, WV 25305

The Honorable Chris Phillips, Chair  
West Virginia House of Delegates  
Room 213E, Bldg. 1  
1900 Kanawha Blvd. E.  
Charleston, WV 25305

Dear Chairmen:

West Virginia (W. Va.) Code §30-1-10(b)(2) requires the legislative auditor to review the fee structure of a board when notified by the State Treasurer's Office that cash has been transferred from a board's special fund to the State General Revenue Fund. This transfer is triggered when the board's fund balance exceeds twice its annual budget or \$10,000, whichever is greater. In November 2022, the State Treasurer's Office notified the legislative auditor that a transfer had been triggered from the Board of Licensed Dietitians (Board) to the State General Revenue Fund in FY 2021 in the amount of \$7,099.60.

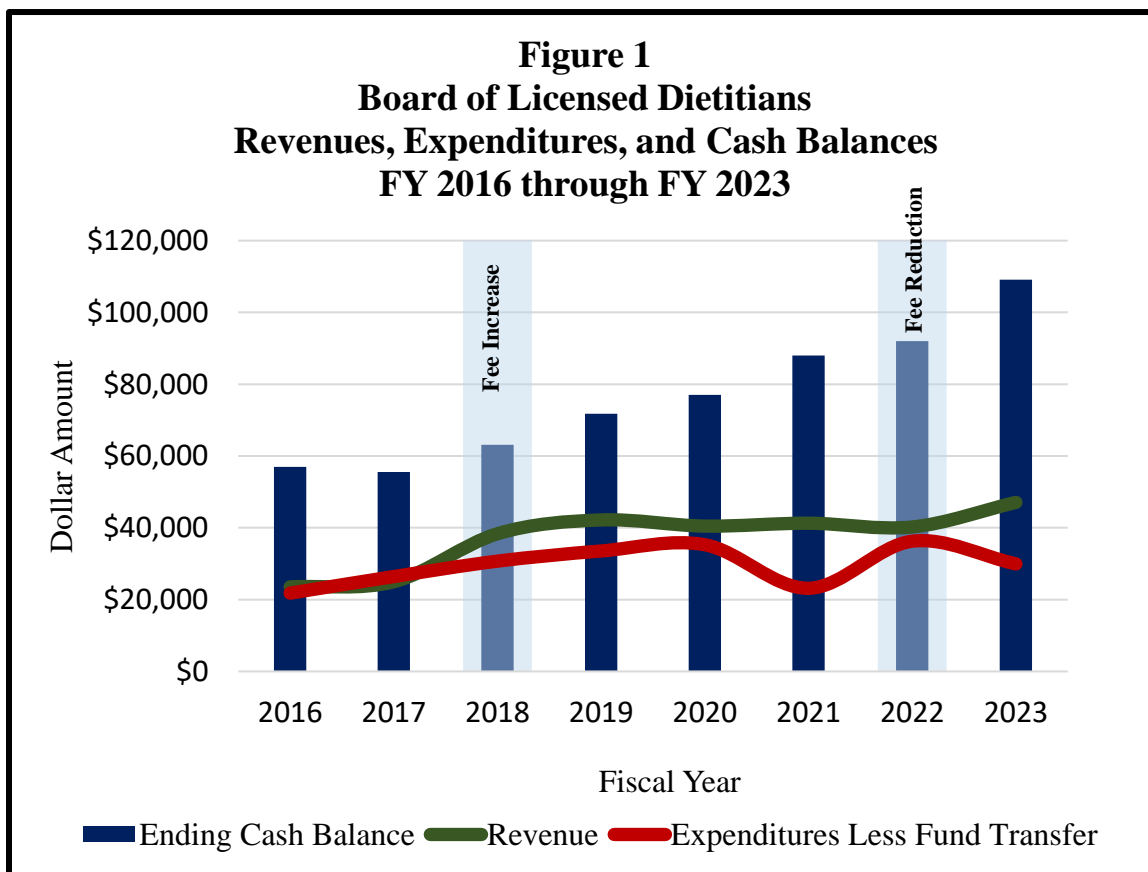
Upon being notified of such a transfer under W. Va. Code §30-1-10(b)(2), the legislative auditor must determine if the amount of a board's fees generates excessive revenue when compared to its normal expenses. If the legislative auditor finds that excessive revenue is generated, the findings are to be reported to the Joint Standing Committee on Government Organization, along with recommendations on how fees can be adjusted to generate only the amount a board reasonably needs to operate.

It should be noted that W. Va. Code §30-1-10(b)(2) requires the legislative auditor to review the fee structure of any board subject to a fund transfer "*within a reasonable time after the State Treasurer notifies the Legislative Auditor.*" While the State Treasurer's Office was supposed to notify the legislative auditor of any transfer beginning in FY 2019, this notification was not made until November 2022. This delayed the legislative auditor's review. The State Treasurer's

Office, however, acknowledged the oversight and committed to properly notifying the legislative auditor going forward.

## The Board's Current Fee Structure Continues to Generate Excessive Revenue Compared to Normal Expenses

Figure 1 shows the Board's financial information from FY 2016 through FY 2023. Initial fees for licensure and renewal for dietitians are set in W. Va. Code of State Rules, Title 31, Series 01. From 1996 to 2018, the Board charged \$50 for initial licensure and annual renewal. From 2018 to 2022, the Board charged \$75 for initial licensure and renewal. However, during the 2022 legislative session, the Legislature passed Senate Bill 334, a rules-authorization bill, that directed fees be reduced by approximately 10 percent for 8 regulatory boards, including the Board of Licensed Dietitians. As of April 2022, the Board charges \$69 for initial licensure and renewal. As Figure 1 shows, revenues exceeded expenditures every year except for FY 2017. Although the difference between revenue and expenditures is relatively modest, over time, the Board accumulated a large cash balance that eventually exceeded twice the Board's annual budget and required transfers of excess funds to the State General Revenue Fund. PERD found that the drop in expenditures in FY 2021 is due to a decrease in spending for certain categories during the pandemic, such as travel and training. The transferred amount to the State General Revenue Fund



is recorded as an expenditure in the State's central accounting system (OASIS); however, PERD excluded the transfer from the Board's total FY 2021 expenditures in Figure 1 because the law requires the analysis consider "normal" expenses.

Under W. Va. Code §30-1-10, the State Treasurer's Office is to determine whether an excess-balance transfer is to be made to the State General Revenue Fund by calculating if a board's end-of-year cash balance exceeds twice the board's annual "budgeted" total as submitted for the State Executive Budget. The Board has had four incidents of excess balances (2016, 2021, 2022, 2023). According to the Board, the excess balances have grown over the last few years, despite the fee reductions, because of a combination of two things: 1) an increase in the number of licensees due to interstate telehealth practice, and 2) as previously mentioned, a decrease in certain spending categories due to the pandemic. The Board indicated that it has not returned to pre-pandemic expenditures, and due to the pandemic, many dietitians from other states became licensed in West Virginia to establish interstate telehealth practices.<sup>1</sup> The Board does not have data that indicate the increase in out-of-state licensees is for telehealth services. The Board does not have a distinct license or permit for out-of-state licensees who desire to provide telehealth services. In contrast, the West Virginia Board of Medicine issues an Interstate Telehealth Registration to eligible practitioners to provide telehealth services to patients located in West Virginia from another state. An Interstate Telehealth Registration is not a license to practice medicine and surgery in West Virginia. It only authorizes the registrant to provide telehealth services to West Virginia patients.

Since 2020, the number of licensees grew from 519 to 628 in 2023. An excess-balance transfer of \$28,204 for FY 2023 was made in December 2023, which will reduce the Board's FY 2024 cash balance by that amount. It should be noted that the \$28,204 includes the FY 2022 excess-balance of \$11,061 because the State Treasurer's Office did not initiate the transfer in FY 2022. Consequently, the \$11,061 carried over into the FY 2023 amount. However, given the growth in the number of licensees and average revenue exceeding average actual expenditures by over \$7,000 each year, transfers of excess balances will reoccur, which is indicative of revenue being generated consistently beyond normal expenses. The Board's chairperson stated that a further reduction of the initial and renewal fees has been discussed and may be warranted. **It is PERD's opinion that the Board consider reducing the initial and renewal fees appropriately to avoid revenue being generated beyond normal expenses.**

---

<sup>1</sup> "Telehealth" is the application of evaluative, consultative, preventative, and therapeutic services delivered through telecommunication and information technologies. Medical nutrition therapy or nutrition therapy services provided by means of a telehealth service delivery model can be synchronous, that is, delivered through interactive technologies in real time, or asynchronous, using store-and-forward technologies. Telehealth is considered the same as teletherapy, telerehabilitation, and telepractice in various settings.

<b>Table 1</b> <b>Revenue, Expenditures, and Cash Balances</b> <b>FY 2016 through FY 2022</b>					
<b>Fiscal Year</b>	<b>Budgeted Expenditures</b>	<b>Actual Expenditures*</b>	<b>End-of-Year Cash Balance</b>	<b>Revenue</b>	<b>Excess Balance</b>
<b>2016</b>	\$28,000	\$21,800	\$56,956	\$23,555	\$956
<b>2017</b>	\$34,957	\$26,431	\$55,525	\$25,000	\$0
<b>2018</b>	\$33,000	\$30,719	\$63,160	\$38,355	\$0
<b>2019</b>	\$38,000	\$33,551	\$71,809	\$42,200	\$0
<b>2020</b>	\$40,469	\$35,290	\$77,004	\$40,485	\$0
<b>2021</b>	\$40,469	\$23,157	\$88,037	\$41,290	\$7,099
<b>2022</b>	\$40,469	\$36,274**	\$91,999	\$40,237	\$11,061
<b>2023</b>	\$40,469	\$29,949**	\$109,142	\$47,092	\$28,204
<b>Avg.</b>		\$29,646		\$37,277	
<i>Sources: WV OASIS FIN-GL-151 reports, executive budget operating details, PERD calculations, and the State Treasurer's Office.</i> <i>* Does not include excess balances transferred to the State General Revenue Fund.</i> <i>**The State Treasurer's Office did not initiate the FY 2022 excess balance transfer. Consequently, the amount carried over into the FY 2023 excess balance amount.</i>					

## **The Legislature Should Consider an Alternative Method of Determining Excess Balances**

As Table 1 above shows, the Board's budgeted expenditures are usually above actual expenditures, which is understandable. However, if a board's budgeted expenditures are well above actual expenditures, it will allow cash balances to grow because the relatively high budgeted amount will avert fund transfers to the State General Revenue Fund. In the past, PERD has noted that the current mechanism for determining excess cash balances should be revisited because using budgeted expenditures could incentivize inflated budgeted expenditures and/or increases in actual expenditures as ways to avoid fund transfers. In previous reports, PERD recommended the Legislature consider basing the excess-balance transfer mechanism on a board's cash balance exceeding the sum of total revenues for the previous two fiscal years. The Legislature has recently proposed several bills related to this issue as well, each with different transfer mechanisms. During the 2023 legislative session, Senate Bill 248 proposed basing transfers on the sum of twice a board's current actual expenditures. In that same year, House Bill 3011 proposed basing transfers on the average of annual expenditures for the past five years. In the 2024 legislative session, several bills were introduced to change the method for determining excess balances, two of which based the method on revenues instead of expenditures. Senate Bill 432 based the excess-fund transfer on the sum of total revenues for the previous two fiscal years, consistent with PERD's recommendation, and House Bill 4599 proposed transfers on the average revenue over the preceding four years. PERD reiterates the previous recommendation that **the Legislature**

consider amending W. Va. Code §30-1-10 to state that excess-balance transfers from licensing boards to the State General Revenue Fund be based on the sum of a board's actual revenues for the previous two fiscal years.

## **Recommendations**

1. *The Performance Evaluation and Research Division recommends the Board of Licensed Dietitians consider an appropriate reduction of its initial licensure and annual renewal fees to avoid generating revenue beyond normal expenses.*
2. *The Legislature should consider amending West Virginia Code §30-1-10 to state that excess-balance transfers from licensing boards to the State General Revenue Fund be based on a board's cash balance exceeding the sum of a board's actual revenues for the previous two fiscal years.*

Sincerely,

A handwritten signature in cursive script that reads "John Sylvia".

John Sylvia