

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

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**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 is in excess of twice its annual budget or \$10,000, whichever is greater. On November 20, 2023, the State Treasurer's Office notified the legislative auditor that a transfer had been triggered from the Board of Respiratory Care (Board) to the State General Revenue Fund on August 21, 2023, in the amount of \$94,632.06.

Upon being notified of such a transfer under W. Va. Code §30-1-10(b)(2), the legislative auditor must determine if a board's fee structure 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

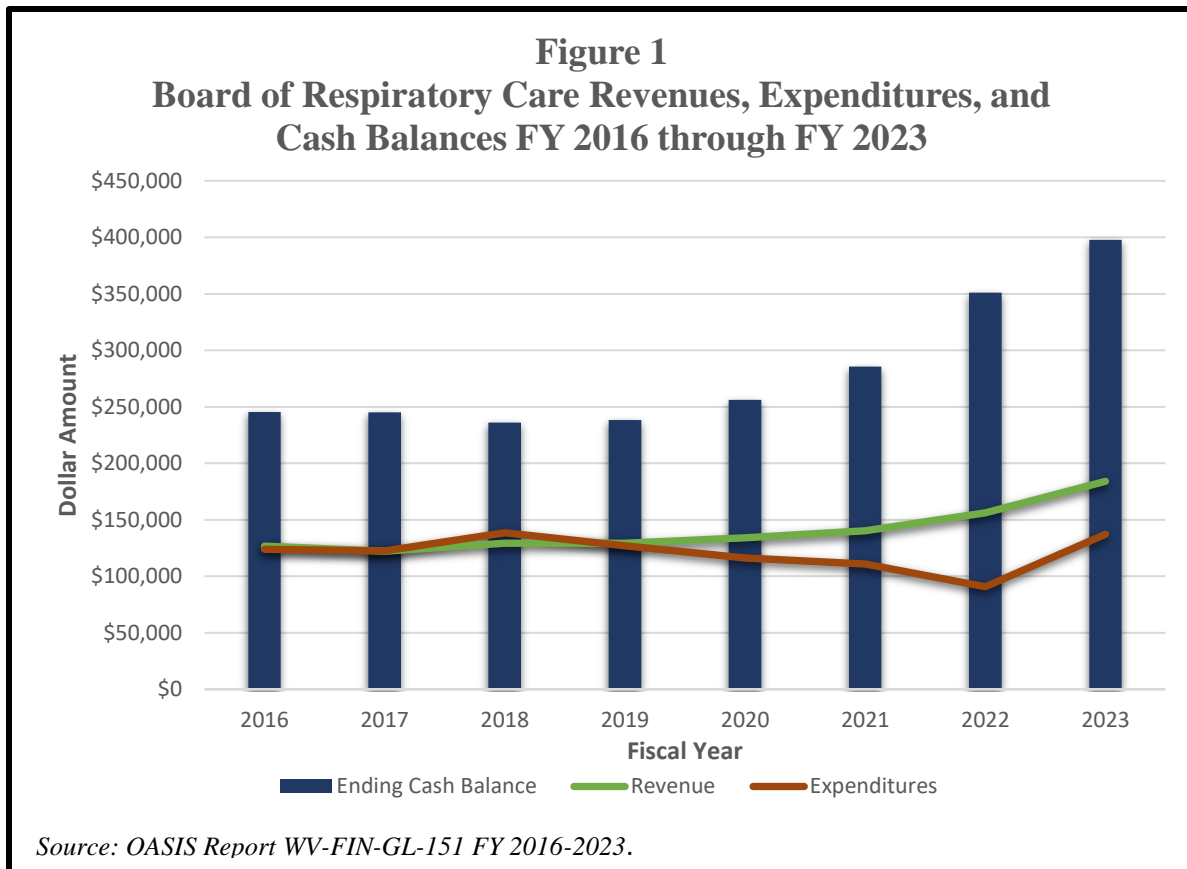
Office, however, acknowledged the oversight and committed to properly notifying the legislative auditor going forward.

## **The Board's Current Fee Structure Generates 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 respiratory therapists are set in W. Va. Code of State Rules 30 CSR 02. The Board's licensing fees have not changed since its inception in 1995. The Board charges an initial \$200 fee when an applicant applies for licensure. A licensure renewal fee is \$65 to be paid by the first of January of each year. However, any licensee who files for renewal between November 1 and November 30, in any year, is allowed to pay a reduced fee of \$55 for license renewal. According to the Board, for FY 2023, it received a total of \$104,910 for renewal fees. It received \$67,925 (\$55) in November revenue and \$36,985 (\$65) in December revenue. Figure 1 shows revenues exceeded expenditures every year except for fiscal years 2017 and 2018. According to the Board, the increase in revenues and the end-of-year cash balances beginning in FY 2020 is mainly attributed to the increase in new licensees who are telehealth<sup>1</sup> practitioners from out of state who began practicing in West Virginia virtually as a result of the COVID-19 pandemic. The Performance Evaluation and Research Division (PERD) confirmed that new out-of-state licensees increased by 52 percent from FY 2020 to FY 2023, but the Board does not have data that indicate the increase 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.

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



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. As seen in Table 1, the Board has had two incidents of excess balances (2022, 2023). PERD determines that the excess balances have grown over the last few years because of a combination of two things: 1) an increase in the number of licensees, and 2) a decrease in certain spending categories due to the pandemic. It should be noted that according to an October 4, 2023, letter from the Office of the State Treasurer to the Board, the FY 2022 excess balance transfer of \$53,752 was never initiated by the Treasurer’s Office due to an error. As a result, the State Treasurer made a transfer request to the Board of \$94,632 in August 2023 which encompassed the combined excess balance transfers required for FY 2022 and FY 2023.

<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>	\$131,030	\$123,778	\$245,449	\$126,713	\$0
<b>2017</b>	\$131,030	\$122,450	\$245,224	\$122,225	\$0
<b>2018</b>	\$131,090	\$138,573	\$236,036	\$129,386	\$0
<b>2019</b>	\$131,090	\$126,998	\$238,457	\$129,419	\$0
<b>2020</b>	\$148,587	\$116,354	\$256,164	\$134,060	\$0
<b>2021</b>	\$148,587	\$110,924	\$285,512	\$140,273	\$0
<b>2022</b>	\$148,587	\$90,782*	\$350,926	\$156,195	\$53,752
<b>2023</b>	\$151,613	\$137,133*	\$397,858	\$184,065	\$94,632
<b>Average</b>		<b>\$120,874</b>		<b>\$140,292</b>	
<i>Source: WV OASIS FIN-GL-151 reports, executive budget operating details, and PERD calculations.</i> <i>*The State Treasurer's Office did not initiate the transfer of the 2022 excess balance resulting in the 2023 excess balance being initiated by the Treasurer's Office.</i>					

## **An Increase in Licensees Was the Main Cause of Growth of Revenue After FY 2020**

Figure 2 below shows the number of licensees for FY 2016 through FY 2023. From FY 2016 to FY 2020, the growth in the number of licensees was flat; however, once the pandemic began in the second half of FY 2020, the Board experienced a significant increase in the number of licensees. From FY 2020 to FY 2023, the number of out-of-state licensees increased by 52 percent. The Board states that this increase is associated with the availability of telehealth and the COVID-19 pandemic. Although data are not available to confirm the reason for the growth in out-of-state licensees, the Board's explanation is a reasonable assumption.

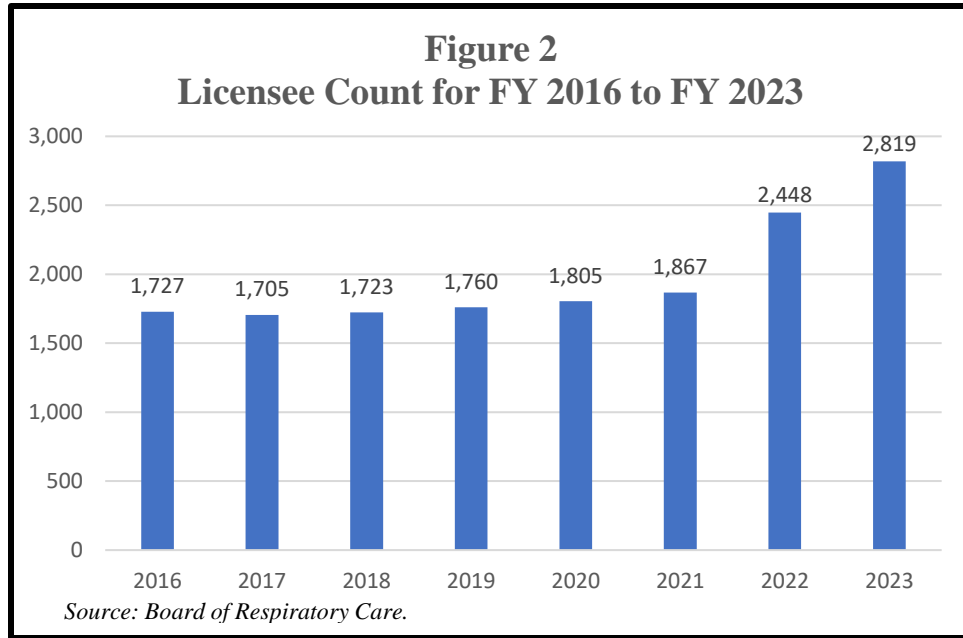


Table 2 below shows the total number of licensees along with the number of new licensees and the revenue generated from them for FY 2019 through FY 2023. Due to the \$200 initial licensing fee being higher than the renewal fees of \$55 and \$65, the increase of new licensees beginning in FY 2021 increased the end-of-year balance significantly, which led to the need to transfer funds to the State General Revenue Fund. Since 2020, the number of licensees grew from 1,805 to 2,819 in 2023. An excess-balance transfer of \$94,632 was paid by the Board on December 7, 2023, due to the 2023 end-of-year cash balance exceeding the budgeted expenditures. As stated previously, the \$94,632 transfer was relatively high because the \$53,752 transfer was not initiated by the State Treasurer's Office erroneously in fiscal year 2022.

<b>Table 2</b> <b>Increase of New Licensees</b> <b>FY 2019 to FY 2023</b>			
<b>Fiscal Year</b>	<b>Total Licensees*</b>	<b>New Licensees</b>	<b>Revenue from New Licensees</b>
<b>FY 2019</b>	1,760	113	\$22,000
<b>FY 2020</b>	1,805	118	\$23,600
<b>FY 2021</b>	1,867	272	\$54,000
<b>FY 2022</b>	2,448	223	\$44,000
<b>FY 2023</b>	2,819	350	\$70,000

Source: Board of Respiratory Care.

\*According to the Board, the running totals do not match new licensee numbers because some licensees do not renew their license at the end of the calendar year.

After the excess balance is transferred to the State General Revenue Fund, the Board's cash balance will decline by that amount. However, given the growth in the number of licensees and average revenue exceeding average actual expenditures by over \$19,000 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.**

## **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 Respiratory Care 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 the 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