

COVER SHEET FOR FINAL PROPOSAL

Notice Number 2021-105

Rule Number Plc 1001

<p>1. Agency Name & Address:</p> <p>Office of Professional Licensure & Certification 7 Eagle Square Concord, NH 03301</p>	<p>2. RSA Authority: <u>RSA 310-A:1-d, II(h)(1)</u></p> <p>3. Federal Authority: <u>n/a</u></p> <p>4. Type of Action:</p> <p><input type="checkbox"/> Adopt</p> <p><input type="checkbox"/> Amendment (only if Initial Proposal was filed before 9/27/20.)</p> <p><input type="checkbox"/> Repeal</p> <p><input type="checkbox"/> Readoption</p> <p><input checked="" type="checkbox"/> Readoption w/amendment</p>
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5. Short Title: **Purpose; Applicability; Definitions; Generally-Applicable Fees**

6. Contact person for copies and questions:

Name: Gretchen Hamel	Title: Program Specialist IV
Address: OPLC 7 Eagle Square Concord, NH 03301	Phone #: Please contact via email: <u>Gretchen.Hamell@opl.nh.gov</u>

7. The rulemaking notice appeared in the Rulemaking Register on **October 14, 2021**.

SEE THE INSTRUCTIONS--PLEASE SUBMIT ONE COPY OF THIS COVER SHEET AND ONE COPY OF THE FOLLOWING: (optional to number correspondingly)

8. The "Final Proposal-Fixed Text," including the cross-reference table required by RSA 541-A:3-a, II as an appendix.
9. Yes N/A Incorporation by Reference Statement(s) because this rule incorporates a document or Internet content by reference for which an Incorporation by Reference Statement is required pursuant to RSA 541-A:12, III.
10. Yes N/A The "Final Proposal-Annotated Text," indicating how the proposed rule was changed because the text of the rule changed from the Initial Proposal pursuant to RSA 541-A:12, II(d).
11. Yes N/A The amended fiscal impact statement because the change to the text of the Initial Proposal affects the original fiscal impact statement (FIS) pursuant to RSA 541-A:5, VI.

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5. Short Title: **Purpose; Applicability; Definitions; Generally-Applicable Fees**

6. (a) Summary of what the rule says and of any proposed amendments:

Plc 1001 was recently readopted with amendment as an interim rule to establish, for all boards, commissions, and councils listed in RSA 310-A:1-a, I, fees for providing copies of documents or electronic information, a credit card service fee, the Professionals' Health Program fee, the fee for temporary licensure under Plc 800, and fees for replacing a license or certificate, for obtaining or replacing a wall display certificate, for maintaining retired or inactive status, and for paying with a check or money order that is returned as uncollectable. In Plc 1001 the rule also established that there is no additional fee for late renewal and no fees for providing a letter of good standing or otherwise verifying licensure status, replacing a pocket card or identification card, reviewing a course for pre-licensing education credit, filing a complaint or a petition for declaratory ruling, providing a copy of a roster or mailing list, or providing a "warranty seal".

Plc 1001 is scheduled to expire 3-21-22. As part of readopting the rules as regular rules, amendments are proposed to address concerns identified by the Joint Legislative Committee on Administrative Rules (JLCAR) during the interim rulemaking process. Specifically, the following changes are proposed:

- **Revise Plc 1001.08 to cite authority in RSA 310-A:1-e, I(a) for the Professionals' Health Program fee required with initial applications; and**
- **Revise Plc 1001.11 to clarify that the fee for retired or inactive status applies only to those professions for which the statute under which the profession is regulated authorizes the fee.**

6. (b) Brief description of the groups affected:

These rules affect anyone who holds or wishes to apply for a license in a profession regulated by the OPLC or a board, commission, or council listed in RSA 310-A:1-a, I, and anyone who wishes to obtain paper or electronic copies of information from the OPLC or from a board, commission, or council listed in RSA 310-A:1-a, I.

6. (c) Specific section or sections of state statute or federal statute or regulation which the rule is intended to implement:

Rule	State Statutes Implemented
Plc 1001 (see below for additional statutes)	RSA 310-A:1-e
Plc 1001.06	RSA 21-G:6-a
Plc 1001.07	RSA 332-G:14, III(g)
Plc 1001.12	RSA 6:11-a

7. Contact person for copies and questions including requests to accommodate persons with disabilities:

Name: **Gretchen Hamel** Title: **Program Specialist IV**
Address: **OPLC** Phone #: **Please contact via email**
7 Eagle Square Fax#: **(603) 271-0597 (main OPLC)**
Concord, NH 03301 E-mail: **Gretchen.R.Hamell@oplcnh.gov**

The rules can be reviewed on-line at TTY/TDD Access: Relay NH 1-800-735-2964
<https://www.oplc.nh.gov/oplc-laws-and-rules> or dial 711 (in NH)

8. Deadline for submission of materials in writing or, if practicable for the agency, in the electronic format specified: **4:00 PM on Friday, November 19, 2021**

Please submit comments to OPLC-Rules@oplcnh.gov

Fax E-mail Other format (specify):

9. Public hearing scheduled for:

Date and Time: **Tuesday, November 9, 2021 at 10:00 AM**
Place: **Hearing Room, Office of Professional Licensure & Certification,
7 Eagle Square, Concord, NH 03301**

10. Fiscal Impact Statement (Prepared by Legislative Budget Assistant):

FIS # 21:110, dated 10/04/2021

1. Comparison of the costs of the proposed rule(s) to the existing rule(s):

There is no difference in costs when comparing the proposed rules to the existing interim rules.

2. Cite the Federal mandate. Identify the impact on state funds:

No federal mandate, no impact on state funds.

3. Cost and benefits of the proposed rule(s):

A. To State general or State special funds:

None.

B. To State citizens and political subdivisions:

None.

C. To independently owned businesses:

None.

11. Statement Relative to Part I, Article 28-a of the N.H. Constitution:

The rules do not have any costs; all costs are attributable to the statute (RSA 310-A:1-e, I(a)). The rules thus do not mandate or assign any new, expanded, or modified programs or responsibilities to any political subdivision in such a way as to necessitate additional local expenditures and so do not violate Part I, Article 28-a of the N.H. Constitution.

CHAPTER Plc 1000 FEES, PER DIEMS, AND REIMBURSABLE EXPENSES

Statutory Authority: RSA 310-A:1-d, II(h)

Readopt with amendment Plc 1001, eff. 9-22-21 (doc. #13264, Interim), to read as follows:

PART Plc 1001 PURPOSE; APPLICABILITY; DEFINITIONS; GENERALLY-APPLICABLE FEES

Plc 1001.01 Purpose. The purpose of this chapter is to establish the fees charged for processing applications and for other services provided by or for the office of professional licensure and certification (OPLC) and by or for the boards, commissions, and councils listed in RSA 310-A:1-a, I, hereinafter referred to as “supported boards, commissions, and councils” or “supported boards, commissions, or councils” based on context.

Plc 1001.02 Applicability.

(a) The rules in this chapter shall apply to the identified application processing and other service(s) provided by or for the OPLC or supported board, commission, or council, as identified in the section that establishes the fee, to the extent the fee established herein does not conflict with any statutorily-established fee.

(b) The fees established in this chapter shall supersede any corresponding fees established in a rule adopted by a supported board, commission, or council.

Plc 1001.03 Incorporated Definitions.

(a) The definitions in Plc 100 shall apply to this chapter.

(b) Any term or acronym used in Plc 1002 shall have the meaning established in the rules that establish the license to which the rule pertains.

Plc 1001.04 Chapter-Specific Definitions. The following definitions shall apply to this chapter:

(a) “Reinstatement” means issuing a license to an individual who previously held a license but whose license has lapsed, expired, or otherwise been rendered inactive; and

(b) “Renewal” means issuing a license to an individual who holds a license at the time an application to renew the license is filed or who files an application to renew the license within the grace period allowed by the applicable board, commission, or council.

Plc 1001.05 Fees for Providing Copies of Documents or Electronic Information. The fees specified in Table 1001.1, below, shall apply as provided in Plc 1001.02 to the provision of copies of documents or electronic information requested from the OPLC or a supported board, commission, or council:

Table 1001.1 Fees for Providing Copies of Documents or Electronic Information

Category	Fee
Copying of paper documents	\$0.25 per page
Providing electronic information, including hearing recordings, on a portable data storage device, such as a flash drive	Actual cost of device used

Plc 1001.06 Credit or Debit Card Service Fee. When a credit card or debit card is used to pay a fee established in Plc 1000 or authorized in the statutes or rules of one of the supported boards, commissions, or councils, the OPLC shall charge a service fee of \$2.50 per transaction.

Plc 1001.07 Temporary License Application Fee. The fee for applying for a temporary license as provided in Plc 801 shall be \$25 per application.

Plc 1001.08 Professionals' Health Program Fee.

(a) Pursuant to RSA 310-A:1-e, I-a, licensees in the professions regulated by the following boards shall be charged a professionals' health program fee of \$20.00 for each renewal application:

- (1) Board of licensed alcohol and other drug use professionals;
- (2) Board of chiropractic examiners;
- (3) Board of dental examiners;
- (4) Board of licensed dietitians;
- (5) Board of medicine;
- (6) Board of mental health practitioners;
- (7) Midwifery council;
- (8) Board of nursing;
- (9) Board of optometrists;
- (10) Pharmacy board;
- (11) Board of podiatrists;
- (12) Board of psychologists;
- (13) Board of veterinary medicine; and

See Unclear/Leg. Intent/Authority comment on pg. 4.

(14) Any other board listed in RSA 310-A:1-a, I that votes to participate in the professionals' health program and that is added to any existing contract for services or that is part of a new contract for services.

(b) If a board is added pursuant to (a)(14), above, the executive director shall:

- (1) Publicize the board's participation in the way most likely to inform affected persons; and
- (2) Initiate a rulemaking to add the board to (a), above.

(c) Pursuant to RSA 310-A:1-d, II(h)(1), applicants in the professions listed in (a), above, shall also be charged a professionals' health program fee of \$20.00 for each initial application.

(d) The OPLC shall deposit professionals' health program fee payments in the New Hampshire health professionals' program administration fund established by RSA 310-A:1-e, I-a.

(e) The professionals' health program fee shall be separate from, and in addition to, the application processing fee established in Plc 1002.

Plc 1001.09 Fee for Replacement of License or Certificate.

(a) No fee shall be paid for a replacement license or certificate that is issued electronically.

(b) The fee for providing a replacement copy of a license or certificate in hard copy shall be the actual cost of having a vendor produce the license or certificate or \$20, whichever is less.

Plc 1001.10 Fee for Wall Display Certificate - Original or Replacement.

(a) If a wall display certificate is not issued as part of the licensing or certification process for a particular profession, a licensee may obtain a wall display certificate by submitting a written request and paying the actual cost of having a vendor produce the certificate or \$20, whichever is less.

(b) The fee for obtaining a replacement wall display certificate shall be the actual cost of having a vendor produce the certificate or \$20, whichever is less.

Plc 1001.11 Fee for Retired or Inactive Status. The fee for a licensee to be on retired or otherwise inactive status for those professions for which the statute under which the profession is regulated authorizes the fee shall be one-half of the annual fee for active status per year.

Plc 1001.12 Fee for Returned Checks, Drafts, and Money Orders. If any check, draft, or money order that was submitted to the OPLC or a supported board, commission, or council in payment is returned as uncollectable, the person submitting the check shall pay a fee of the greater of \$25 or 5% of the amount of check plus all protest and bank fees, in addition to paying the original amount due.

Plc 1001.13 No Additional Fee for Late Renewal. No additional fee shall be charged to a licensee who files an application for renewal after the deadline established in the applicable statute or rules.

Plc 1001.14 No Fees For Certain Services. No fee shall be charged for any of the following:

- (a) Providing a letter of good standing or otherwise verifying licensure status;
- (b) Providing a replacement for a pocket card or identification card;
- (c) Reviewing a course to determine its suitability for pre-licensing education credit;
- (d) Filing a complaint or a petition for declaratory ruling;
- (e) Providing a copy of a roster or mailing list; or
- (f) Providing a “warranty seal”.

Appendix

Rule	State Statutes Implemented
Plc 1001 (see below for additional statutes)	RSA 310-A:1-e
Plc 1001.06	RSA 21-G:6-a
Plc 1001.07	RSA 332-G:14, III(g)
Plc 1001.12	RSA 6:11-a

Unclear/Legis. Intent/Authority. There is a lack of authority under the statute cited because that statutory fee (for the professionals' health program) is only for renewals, not for initial licenses. Pursuant to RSA 541-A:22, III(c), specific authority is required for fees. Further, it does not appear logical that the language in RSA 310-A:1-d, II(h)(1) of the statute cited in (c) would provide authority for a fee for initial applicants since (h)(4), in the same paragraph, specifically says the rules for the professional health program shall be under RSA 310-A:1-e, which calls for a fee for only those professionals renewing their licenses. OPLC argues in its Summary of Comments, attached, that "[i]f fees for the PHP are not assessed at the time of initial licensure, then a significant number of licensees will have access to the PHP for up to two years without any contribution to its costs, and the fees collected will not meet the statutory mandate." However, RSA 541-A:22, III(c) requires specific authority to require fees. It appears that RSA 310-A:1-e only gives the specific authority to require fees for renewing a license. It is reasonable that the Legislature might have determined that requiring this fee at an initial license stage was not appropriate or not wanted, but rather the fee should only be assessed at the renewal stage. Further, it is the statutory responsibility of the Executive Director of OPLC to set the fees to ensure that they cover 125 percent of the total operating expenses. If the fees established for renewal licensees are not enough to cover the 125 percent without charging initial licensees, which there does not appear to be authority for, then the fee for renewal licensees may need to be changed by the Executive Director.

Finally, the amended FIS states that "[t]here is no difference in costs when comparing the proposed rules to the existing interim rules" because the increase from \$16 to \$20 was done to comply with the statute that requires the fees cover 125 percent of operating expenses. However, it is the opinion of the Committee Attorney that there is a difference in the costs as it has changed from \$16 to \$20 dollars and that change is directly attributed to the rules as the statute sets the authority to charge a fee but the Executive Director actually sets the fee amount based on their assessment of the operating costs. The FIS for the interim rule explained that, for some sections of the rule, fees were changed and that meant there was a potential cost or benefit as the amounts were changing. It is unclear how if other fees change in the rules those changes create a different cost or benefit but if these fees change they do not create a different cost or benefit.

State of New Hampshire

OFFICE OF PROFESSIONAL LICENSURE AND CERTIFICATION

7 Eagle Square, Suite 200
Concord, N.H. 03301-2412
Telephone 603-271-2152

Lindsey B. Courtney
Executive Director



FP 2021-105, Plc 1001 Purpose; Applicability; Definitions; Generally-Applicable Fees Summary of Comments on Initial Proposal with OPLC Responses December 8, 2021

Background

Plc 1001 was recently readopted with amendment as an interim rule to establish, for all boards, commissions, and councils listed in RSA 310-A:1-a, I, fees for providing copies of documents or electronic information, a credit card service fee, the Professionals' Health Program fee, the fee for temporary licensure under Plc 800, and fees for replacing a license or certificate, for obtaining or replacing a wall display certificate, for maintaining retired or inactive status, and for paying with a check or money order that is returned as uncollectable. The rules in Plc 1001 also established that there is no additional fee for late renewal and no fees for providing a letter of good standing or otherwise verifying licensure status, replacing a pocket card or identification card, reviewing a course for pre-licensing education credit, filing a complaint or a petition for declaratory ruling, providing a copy of a roster or mailing list, or providing a "warranty seal".

Plc 1001 is scheduled to expire March 21, 2022. As part of readopting the rules as regular rules, amendments were proposed to address concerns identified by the Joint Legislative Committee on Administrative Rules (JLCAR) during the Interim rulemaking process. Specifically, the following changes were proposed:

- Revise Plc 1001.08 to cite authority in RSA 310-A:1-d, II(h)(1) for the Professionals' Health Program fee required with initial applications; and
- Revise Plc 1001.11 to clarify that the fee for retired or inactive status applies only to those professions for which the statute under which the profession is regulated authorizes the fee.

A representative of the New Hampshire Medical Society attended the public hearing held on November 9, 2021. A summary of those comments and the OPLC's responses are below, in numerical order. Written comments were received from the Office of Legislative Services, Administrative Rules office (OLS); those comments and the OPLC's responses also are summarized below in numerical order.

Plc 1001.08 re: Professionals' Health Program fee

Comment 1: The New Hampshire Medical Society is in favor of the fee for the listed boards, as it will help to fund the dedicated fund that was established and will be more equitable. OPLC should ensure that the fee covers all costs of the program.

Response 1: The amount of the fee was calculated based on the prior contract with the New Hampshire Professionals' Health Program, a New Hampshire non-profit corporation that provide services to professionals referred to the program. Subsequently, a new contract has been entered into, so the fee has been recalculated and adjusted to \$20 per initial and renewal application to ensure that all costs will be covered.

Comment 2: *There are at least three additional boards that are known to be interested in participating in the Professionals' Health Program, and others may become interested as they become more educated about the program. The rules should allow for participation by additional boards so that they won't have to wait four to six months for the rule to be amended just to participate.*

Response 2: Language has been added to paragraph (a) to include "Any other board listed in RSA 310-A:1-a, I that votes to participate in the professionals' health program and that is added to any existing contract for services or that is part of a new contract for services." Also, a new paragraph (b) has been added to ensure that persons affected will become aware of the fee and program and to confirm that rulemaking will be done to add the board to paragraph (a).

OLS Comments

Plc 1001.08(b) re: professionals' health program fee with initial application

Comment: "***Unclear/Legis. Intent/Authority.*** This fee for each initial license application was in (a), above, in the interim rule. Committee staff commented that there was no authority under the statute cited in (a) because that statutory fee (for the professionals' health program) was only for renewals, not for initial licenses. OPLC has included the fee again, in (b), with a citation to a different statute. However, the statute in (b), unlike in (a), makes no specific mention of the health program fee. Pursuant to RSA 541-A:22, III(c), specific authority is required for fees. Further, it does not appear logical that the language in RSA 310-A:1-d, II(h)(1) of the statute cited in (b) would provide authority for a fee for initial applicants since (h)(4), in the same paragraph, specifically says the rules for the professional health program shall be under RSA 310-A:1-e, which calls for a fee for only those professionals renewing their licenses. " (Bold and underlining in original.)

Response: RSA 310-A:1-d, II(h)(1) was amended by 2021, 197:1, eff. July 1, 2021, to specifically include programs: "(1) All fees authorized by statute for all boards, commissions, [~~and~~] councils, **and programs** within the office of professional licensure and certification, ...;". The Professionals' Health Program (PHP) is the only program implemented by the OPLC. Further, RSA 310-A:1-e, I(a) was amended by 2021, 205:78, eff. July 1, 2021, to require the fees assessed to be "sufficient to produce estimated revenues up to 125 percent of the total operating expenses for the office," If fees for the PHP are not assessed at the time of initial licensure, then a significant number of licensees will have access to the PHP for up to two years without any contribution to its costs, and the fees collected will not meet the statutory mandate. It thus is clear that the Executive Director has authority to adopt fees for the PHP independent of RSA 310-A:1-e, I-a.

Edits made: [none identified by OLS; none otherwise found]