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Final Regulation Agency Background Document

Agency name	Board of Social Work, Department of Health Professions
Virginia Administrative Code (VAC) Chapter citation(s)	18VAC140-20
VAC Chapter title(s)	Regulations Governing the Practice of Social Work
Action title	Changes to endorsement and reinstatement; standards of practice
Date this document prepared	June 3, 2022

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1VAC7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

The Board is amending these regulations 1) licensure by endorsement to eliminate all requirements for either supervised experience or active practice in another jurisdiction; 2) reinstatement or reactivation of licensure to eliminate requirements for a person whose license has been lapsed for 10 or more years to provide evidence of either active practice in another jurisdiction or in an exempt setting, or supervised practice of no less than 360 hours in a 12-month period; and 3) additions to the standards of practice to specify that persons licensed by the board shall not engage in physical contact with a client when there is a likelihood of psychological harm to the client and shall not sexually harass a client.

Acronyms and Definitions

Define all acronyms used in this form, and any technical terms that are not also defined in the "Definitions" section of the regulation.

LBSW = licensed bachelor social worker
LMSW = licensed master social worker
LCSW = licensed clinical social worker

Statement of Final Agency Action

Provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.

On June 3, 2022, the Board of Social Work adopted final amendments to the Regulations Governing the Practice of Social Work.

Mandate and Impetus

List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding the mandate for this regulatory change, and any other impetus that specifically prompted its initiation. If there are no changes to previously reported information, include a specific statement to that effect.

There is no mandate for this regulatory change; the impetus comes from recommendations of the Regulation Committee or to address situations in which the Board did not have specific grounds to address a complaint from a client about the actions of a licensed social worker and to lessen the burden on applicants for licensure by endorsement or reinstatement from inactive license status.

Legal Basis

Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia and Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.

Regulations of the Board of Social Work are promulgated under the general authority of Chapter 24 of Title 54.1 of the Code of Virginia. Virginia Code § 54.1-2400(6) specifically states that the general powers and duties of health regulatory boards shall be “[t]o promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) that are reasonable and necessary to administer effectively the regulatory system.”

Purpose

Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it's intended to solve.

The amendments to the standards of practice are intended to address a situation in which a practitioner's action may be clearly unprofessional and detrimental to the welfare of a client, but the Board does not

have specific grounds to take some disciplinary action. Amendments will ensure that the Board can take action as necessary to protect the health and safety of the public. Amendments related to endorsement and reinstatement requirements are intended to lessen the burden on individuals applying for licensure by endorsement or to reinstate an inactive license.

Substance

Briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of Changes" section below.

The Board adopted amendments to 18VAC140-20-45 to eliminate all requirements for either proof of supervised experience or active practice in another jurisdiction for licensure by endorsement. The Board adopted amendments to 18VAC140-20-110 to eliminate requirements for an individual with a licensed lapsed for ten or more years to provide evidence of either active practice in another jurisdiction or in an exempt setting, or evidence of supervised practice of no less than 360 hours in a 12-month period for reinstatement. The Board adopted amendments to 18VAC140-20-150 to specify that persons licensed by the Board shall not engage in physical contact with a client when there is a likelihood of psychological harm to the client and that licensees shall not sexually harass a client.

Issues

Identify the issues associated with the regulatory change, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, include a specific statement to that effect.

- 1) The primary advantages to the public are: 1) less restrictive requirements for licensure by endorsement may result in an increase in the number of licensed social workers who can provide services in the Commonwealth; and 2) more explicit rules on unprofessional conduct will provide greater protection for clients of social workers. There are no disadvantages to the public.
- 2) There are no primary advantages or disadvantages to the agency or the Commonwealth.
- 3) The Director of the Department of Health Professions has reviewed the proposal and performed a competitive impact analysis. Any restraint on competition as a result of promulgating these regulations is a foreseeable, inherent, and ordinary result of the statutory obligation of the Board to protect the safety and health of citizens of the Commonwealth. The Board is authorized under § 54.1-2400 "[t]o promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) which are reasonable and necessary to administer effectively the regulatory system . . . Such regulations shall not conflict with the purposes and intent of this chapter or of Chapter 1 (§ 54.1-100 et seq.) and Chapter 25 (§ 54.1-2500 et seq.) of this title." The promulgated regulations do not conflict with the purpose or intent of Chapters 1 or 25 of Title 54.1.

Requirements More Restrictive than Federal

List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any requirement of the regulatory change which is more restrictive than

applicable federal requirements. If there are no changes to previously reported information, include a specific statement to that effect.

There are no applicable federal requirements.

Agencies, Localities, and Other Entities Particularly Affected

List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any other state agencies, localities, or other entities that are particularly affected by the regulatory change. If there are no changes to previously reported information, include a specific statement to that effect.

Other State Agencies Particularly Affected – none

Localities Particularly Affected – none

Other Entities Particularly Affected – none

Public Comment

Summarize all comments received during the public comment period following the publication of the previous stage, and provide the agency response. Include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. If no comment was received, enter a specific statement to that effect.

There were no public comments.

Detail of Changes Made Since the Previous Stage

*List all changes made to the text since the previous stage was published in the Virginia Register of Regulations and the rationale for the changes. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. * Put an asterisk next to any substantive changes.*

There have been no substantive changes since the previous stage. In proposed 18VAC140-20-150(D)(7), a comma was inserted between “verbal” and “written.”

Detail of All Changes Proposed in this Regulatory Action

*List all changes proposed in this action and the rationale for the changes. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. * Put an asterisk next to any substantive changes.*

Current chapter-section number	Current requirements in VAC	Change, intent, rationale, and likely impact of updated requirements
20-45	Sets out the qualifications for licensure by endorsement.	An amendment to the requirements for licensure by endorsement for LBSWs, LMSWs, and LCSWs in subsection A will eliminate all requirements for either supervised experience or active practice in another jurisdiction. The Board believes that a social license in good standing plus passage of an examination is sufficient evidence of competency in order for an applicant to be licensed by endorsement from another U.S. jurisdiction. Documentation from another state and from the National Practitioner Data Bank should provide enough information to determine whether there are grounds for denial based on laws and regulations in Virginia.
20-110	Sets out the requirements for late renewals, reinstatement or reactivation of licensure.	Subsection C is amended to eliminate requirements for a person whose license has been lapsed for 10 or more years to provide evidence of either active practice in another jurisdiction or in an exempt setting, or evidence of supervised practice of no less than 360 hours in a 12-month period in order to reinstate or reactive a license. Since the Board does not require active practice to renew an active license, it is eliminating that requirement to reinstate or reactivate a license. A social worker reinstating or reactivating would still be required to show evidence of continuing competency and documentation of licensure in another state, if applicable.
20-150	Sets out the standards for ethical practice.	Under subsection D, relating to dual relationships, two provisions are added in numbers 6 and 7 to specify that persons licensed by the board shall not engage in physical contact with a client when there is a likelihood of psychological harm to the client and shall not sexually harass a client. These provisions are added to address situations that have been reported to the Board in complaints filed by clients. During probable cause review regarding whether to move forward with a disciplinary proceeding, Board members did not believe clear standards existed in regulation on which a disciplinary case could be made. These additions will address conduct that the Board believes is unprofessional and harmful to clients.