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## Fast-Track Regulation Agency Background Document

<b>Agency name</b>	Board of Social Work, Department of Health Professions
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	18VAC140-20
<b>VAC Chapter title(s)</b>	Regulations Governing the Practice of Social Work
<b>Action title</b>	Supervised experience
<b>Date this document prepared</b>	10/5/20

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 proposes amendments to clarify that the definition of “face-to-face” may include the use of technology in the contact between a supervisee and a client and to add a definition for a “supervisory contract.” Other amendments will: (1) clarify that the educational requirements must be completed before persons begin their post-graduate supervised experience; (2) eliminate the requirement that a supervisee notify the Board whenever there is a change of location or supervised experiences; and (3) reiterate that a person must remain under supervision until issued a license.

### 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.

N/A

### 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 September 25, 2020, the Board of Social Work amended 18VAC140-20-10 et seq., Regulations Governing the Practice of Social Work.

### Mandate and Impetus

Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, "mandate" has the same meaning as defined in Executive Order 14 (as amended, July 16, 2018), "a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."

As required by Virginia Code § 2.2-4012.1, also explain why this rulemaking is expected to be noncontroversial and therefore appropriate for the fast-track process.

There is no mandate for this regulatory change; the impetus comes from recommendations of the Regulation Committee to eliminate burdensome requirements, to clarify current provisions, and to eliminate any ambiguity in the regulations.

The regulatory action is less burdensome and does not add any new requirement, so it is not expected to be controversial.

### 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 are promulgated under the general authority of Chapter 24 of Title 54.1 of the Code of Virginia. Section 54.1-2400, which provides the Board of Social Work the authority to promulgate regulations to administer the regulatory system:

#### § 54.1-2400. General powers and duties of health regulatory boards.

The general powers and duties of health regulatory boards shall be:

1. To establish the qualifications for registration, certification, licensure or the issuance of a multistate licensure privilege in accordance with the applicable law which are necessary to ensure competence and integrity to engage in the regulated professions.
2. To examine or cause to be examined applicants for certification or licensure. Unless otherwise required by law, examinations shall be administered in writing or shall be a demonstration of manual skills.
3. To register, certify, license or issue a multistate licensure privilege to qualified applicants as practitioners of the particular profession or professions regulated by such board.
4. To establish schedules for renewals of registration, certification, licensure, and the issuance of a multistate licensure privilege.
5. To levy and collect fees for application processing, examination, registration, certification or licensure or the issuance of a multistate licensure privilege and renewal that are sufficient to cover all expenses for the administration and operation of the Department of Health Professions, the Board of Health Professions and the health regulatory boards.
6. To 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, which shall include provisions for the satisfaction of board-required continuing education for individuals registered, certified, licensed, or issued a multistate licensure privilege by a health regulatory board through delivery of health care services, without compensation, to low-income individuals receiving health services through a local health department or a free clinic organized in whole or primarily for the delivery of those health services. 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.).

**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.*

While the regulatory change is primarily intended to clarify existing requirements, an amendment to the definition of face-to-face will allow persons obtaining supervised experience to use technology that is real-time and interactive in providing their social work services to clients. Additionally, an amendment will clarify that persons who has completed their supervised hours but has not yet passed the licensing examination must remain under supervision until licensed if they continue to provide clinical services. The purpose of these regulatory changes is to protect public health and safety in the clinical practice of social work while persons are registered for supervised experience.

**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 proposes amendments to clarify that the definition of "face-to-face" may include the use of technology in the contact between a supervisee and a client and to add a definition for a "supervisory contract." Other amendments will: (1) clarify that the educational requirements must be completed before persons begin their post-graduate supervised experience; (2) eliminate the requirement that a supervisee notify the Board whenever there is a change of location or supervised experiences; and (3) reiterate that a person must remain under supervision until issued a license.

**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 advantage to the public is the possibility of greater access to licensed clinical social workers by reducing some of the burden for supervisees. There may be greater access for supervisees who will be able to provide face-to-face services to clients through the use of interactive technology. There are no disadvantages to the public.
- 2) There are no advantages and disadvantages to the agency or the Commonwealth; and
- 3) There are no other pertinent matters of interest to the regulated community, government officials, and the public. The Director of the Department of Health Professions has reviewed the proposal and performed a competitive impact analysis. The Board is authorized under § 54.1-2400 to "promulgate regulations in accordance with the Administrative Process Act which are reasonable and necessary to administer effectively the regulatory system." The proposed amendments are less restrictive and may make supervision less costly. Any restraint on competition that results from this regulation is in accord with the General Assembly's policy as articulated in § 54.1-100 and is necessary for the preservation of the health, safety, and welfare of the public and will further the public's need for assurances of quality care.

**Requirements More Restrictive than Federal**

*Identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements, or no requirements that exceed applicable federal requirements, include a specific statement to that effect.*

There are no applicable federal restrictions.

**Agencies, Localities, and Other Entities Particularly Affected**

Identify any other state agencies, localities, or other entities particularly affected by the regulatory change. "Particularly affected" are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.

Other State Agencies Particularly Affected

None

Localities Particularly Affected

None

Other Entities Particularly Affected

None

**Economic Impact**

Pursuant to § 2.2-4007.04 of the Code of Virginia, identify all specific economic impacts (costs and/or benefits), anticipated to result from the regulatory change. When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Keep in mind that this is change versus the status quo.

**Impact on State Agencies**

<p><i>For your agency:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including:                  a) fund source / fund detail;                  b) delineation of one-time versus on-going expenditures; and                  c) whether any costs or revenue loss can be absorbed within existing resources</p>	<p>There are no costs or savings to the agency resulting from this change. As a special fund agency, the Board must generate sufficient revenue to cover its expenditures from non-general funds, specifically the renewal and application fees it charges to practitioners or entities for necessary functions of regulation. All notifications will be done electronically. There are no on-going expenditures.</p>
<p><i>For other state agencies:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures.</p>	<p>None</p>
<p><i>For all agencies:</i> Benefits the regulatory change is designed to produce.</p>	<p>None</p>

**Impact on Localities**

<p>Projected costs, savings, fees or revenues resulting from the regulatory change.</p>	<p>None</p>
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Benefits the regulatory change is designed to produce.	None
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**Impact on Other Entities**

Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect.	Persons who are currently approved to provide supervision for clinical social work practice or those persons who want to begin their supervised experience.
Agency's best estimate of the number of such entities that will be affected. Include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that: a) is independently owned and operated and; b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	There are currently 2,697 registered clinical supervisees.
All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Be specific and include all costs including, but not limited to: a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change; c) fees; d) purchases of equipment or services; and e) time required to comply with the requirements.	There are no costs resulting from the regulatory change.
Benefits the regulatory change is designed to produce.	The elimination of a requirement to notify the Board of certain changes in supervised practice will save a supervisee \$25 for each change that is no longer reportable to the Board.

**Alternatives to Regulation**

*Describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulatory change.*

In order to make a regulation less intrusive and less costly, the Board must adopt amendments to regulation; there is no alternative to a regulatory action.

**Regulatory Flexibility Analysis**

*Pursuant to § 2.2-4007.1B of the Code of Virginia, describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the*

*objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the regulatory change.*

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This action makes the regulation of supervisors in clinical social work less costly and less burdensome.

### Public Participation

*Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below.*

*As required by § 2.2-4011 of the Code of Virginia, if an objection to the use of the fast-track process is received within the 30-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall: 1) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register and 2) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.*

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If you are objecting to the use of the fast-track process as the means of promulgating this regulation, please clearly indicate your objection in your comment. Please also indicate the nature of, and reason for, your objection to using this process.

The Board of Social Work is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal and any alternative approaches, (ii) the potential impacts of the regulation, and (iii) the agency's regulatory flexibility analysis stated in this background document.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: <https://townhall.virginia.gov>. Comments may also be submitted by mail or email to Elaine Yeatts at [elaine.yeatts@dhp.virginia.gov](mailto:elaine.yeatts@dhp.virginia.gov) or at 9960 Mayland Drive, Henrico, VA 23233 or by fax at (804) 527-4434. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

### Detail of Changes

*List all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. 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. Use all tables that apply, but delete inapplicable tables.*

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*If an existing VAC Chapter(s) is being amended or repealed, use Table 1 to describe the changes between existing VAC Chapter(s) and the proposed regulation. If existing VAC Chapter(s) or sections are being repealed and replaced, ensure Table 1 clearly shows both the current number and the new number for each repealed section and the replacement section.*

Table 1: Changes to Existing VAC Chapter(s)

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
10		Sets definition for as necessary for words and terms used in the chapter	<p>An amendment will define “face-to-face” as applicable to the supervisory relationship but also to the client contact requirement between a supervisee and his/her client. It will clarify the definition to include interactions between a client and a supervisee in the context of the requirement in section 50 that a supervised experience must include “a minimum of 1,380 hours of supervised experience in face-to-face client contact in the delivery of clinical social work services.” <i>By amending the definition to be inclusive of client contact, the Board has clarified that the requirement may be met by the physical presence of the individuals or by the use of technology that provides real-time, visual contact among the individuals involved.</i></p> <p>The term “supervisory contract” is defined as an agreement that outlines the expectations and responsibilities of the supervisor and supervisee in accordance with regulations of the board. <i>Currently, a supervisee is defined as someone who has submitted a supervisory contract and has received board approval to provide clinical services in social work under supervision. Board staff receives questions about what is meant by a “supervisory contract” so a definition (and a sample contract) should be helpful.</i></p>
50		Sets requirements for the supervised experience required for licensure as a clinical social worker.	<p>An amendment to subsection A will clarify that prior to registration for supervised experience, a person must satisfactorily complete the educational requirements of section 49. An application of registration of supervision currently requires submission of an official transcript and verification of a practicum. Amendments to subsection A will explicitly state the requirements to submit that documentation as well as a copy of a supervisory contract, as described in the current definition of a supervisee.</p> <p>Currently, a supervisee must notify the Board whenever there is an addition or</p>



			<p>change of supervised practice, supervisor, clinical social work services or location. An addition to or change in registration of supervision must be accompanied by a \$25 fee. <i>The amendment in subsection A will eliminate the requirement for notification of a change or addition of supervised practice, services, or location, which accounts for about half of the changes the Board currently tracks. It was determined that the only change that is pertinent is a change in supervisor because that is the person who is accountable to the Board for the services of a supervisee to a client.</i></p> <p>An amendment to subsection D on responsibilities of a supervisee will clarify that a supervisee must remain under Board approved supervision until licensed in Virginia as a licensed clinical social worker while providing clinical social work services. <i>If the supervisee has completed the requisite number of hours but has not yet received a license, he/she must continue to be supervised and function as a supervisee to ensure there is oversight for his/her practice.</i></p>
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*If a new VAC Chapter(s) is being promulgated and is not replacing an existing Chapter(s), use Table 2.*

**Table 2: Promulgating New VAC Chapter(s) without Repeal and Replace**

<b>New chapter-section number</b>	<b>New requirements</b>	<b>Other regulations and law that apply</b>	<b>Intent and likely impact of new requirements</b>

*If the regulatory change is replacing an **emergency regulation**, and the proposed regulation is identical to the emergency regulation, complete Table 1 and/or Table 2, as described above.*

*If the regulatory change is replacing an **emergency regulation**, but changes have been made since the emergency regulation became effective, also complete Table 3 to describe the changes made since the emergency regulation.*

**Table 3: Changes to the Emergency Regulation**

<b>Emergency chapter-section number</b>	<b>New chapter-section number, if applicable</b>	<b>Current <u>emergency</u> requirement</b>	<b>Change, intent, rationale, and likely impact of new or changed requirements since emergency stage</b>

