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Proposed Regulation Agency Background Document

Agency name	Board of Counseling, Department of Health Professions
Virginia Administrative Code (VAC) citation(s)	18VAC115-20 18VAC115-30 18VAC115-40 18VAC115-50 18VAC115-60
Regulation title(s)	Regulations Governing the Practice of Professional Counselors Regulations Governing the Certification of Substance Abuse Counselors Regulations Governing the Certification of Rehabilitation Providers Regulations Governing the Practice of Marriage and Family Therapists Regulations Governing the Licensure of Substance Abuse Professionals
Action title	Increase in fees
Date this document prepared	2/12/16

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (preferably no more than 2 or 3 paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

Renewal fees for the three licensed professions will increase from \$105 to \$130; for the certified professions, the increase will be from \$55 to \$65. Application and initial licensure fees for the

licensed professions will increase from \$140 to \$175; for the certified professions, the increase will be from \$90 to \$115. All other fees will be increased by approximately 25%.

Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.

LPC = licensed professional counselor
 MFT = marriage and family therapist
 SATP = substance abuse treatment practitioner
 CSAC = certified substance abuse counselor
 SACA = substance abuse counseling assistant
 CRP = certified rehabilitation provider

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including: 1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable; and 2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person's overall regulatory authority.

Regulations of the Board of Counseling are promulgated under the general authority of Title 54.1, Chapter 24 of the Code of Virginia.

Chapter 24 establishes the general powers and duties of health regulatory boards including the responsibility to promulgate regulations in accordance with the Administrative Process Act which are reasonable and necessary and the authority to **levy and collect fees** that are **sufficient to cover all expenses** for the administration of a regulatory program.

§ 54.1-2400. General powers and duties of health regulatory boards.--The general powers and duties of health regulatory boards shall be:

- 5. To levy and collect fees for application processing, examination, registration, certification or licensure 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 (§ 9-6.14:1 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 **contemplated regulation is mandated by § 54.1-113**; however the board must exercise some discretion in the amount and type of fees that will be increased in order to comply with the statute.

§ 54.1-113. Regulatory boards to adjust fees.--Following the close of any biennium, when the account for any regulatory board within the Department of Professional and Occupational Regulation or the Department of Health Professions maintained under § 54.1-308 or § 54.1-2505 shows expenses allocated to

it for the past biennium to be more than ten percent greater or less than moneys collected on behalf of the board, it shall revise the fees levied by it for certification or licensure and renewal thereof so that the fees are sufficient but not excessive to cover expenses.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Describe the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

The issue to be addressed is the need of the Board of Counseling to increase their fees to cover expenses for essential functions of review of applications, licensing, investigation of complaints against licensees, and adjudication and monitoring of disciplinary cases required for public health and safety in the Commonwealth.

Without adequate revenue to support licensing and discipline functions, applicants cannot be approved for licensure in a timely manner thus depriving the citizens of the Commonwealth with some of the mental health services that are needed. Additionally, if there is a substantial backlog of disciplinary cases, public health and safety may be at risk by allowing practitioners guilty of unprofessional conduct to continue in practice for several months awaiting a review and adjudication of an investigative report.

Substance

Please 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.

Renewal fees for the three licensed professions will increase from \$105 to \$130; for the certified professions, the increase will be from \$55 to \$65. Application and initial licensure fees for the licensed professions will increase from \$140 to \$175; for the certified professions, the increase will be from \$90 to \$115. All other fees will be increased by approximately 25%.

Issues

Please identify the issues associated with the proposed regulatory action, 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, please indicate.

- 1) The primary advantage to the public would be that increased fees will produce adequate revenue to fund the licensing and disciplinary activities of the board. With the shortfall of (\$339,084) projected in FY21, there could be significant delays in licensing and in the investigation and adjudication of complaints against licensees. There are no disadvantages;

increases in renewal fees should not significantly impact the cost of counseling services for Virginians.

- 2) There are no disadvantages to the agency; the advantage would be that fees would be sufficient to cover expenditures, which is a requirement of the Code of Virginia.
- 3) There are no additional issues.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include 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 statement to that effect.

There are no requirements more restrictive than federal.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

There are no localities particularly affected.

Public participation

Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulated community.

In addition to any other comments, the Board of Counseling is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the agency/board is seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments may do so via the Regulatory Townhall website, www.townhall.virginia.gov, or by mail to Elaine Yeatts at Department of Health Professions, 9960 Mayland Drive, Suite 300, Richmond, VA 23233 or elaine.yeatts@dhp.virginia.gov or by fax to (804) 527-4434. Comments may also be submitted through the Public Forum feature of the Virginia Regulatory Town Hall web site at: <http://www.townhall.virginia.gov>. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

A public hearing will be held following the publication of this stage and notice of the hearing will be posted on the Virginia Regulatory Town Hall website (<http://www.townhall.virginia.gov>) and on the Commonwealth Calendar website (<https://www.virginia.gov/connect/commonwealth-calendar>). Both oral and written comments may be submitted at that time.

Economic impact

Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact.

<p>Projected cost to the state to implement and enforce the proposed regulation, including: a) fund source / fund detail; and b) a delineation of one-time versus on-going expenditures</p>	<p>a) 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 for necessary functions of regulation; b) The agency will not incur one-time costs since mailings to the Public Participation Guidelines lists and to regulated entities are electronic. A public hearing will be incorporated into a Board meeting already scheduled. There are no on-going costs to the agency.</p>
<p>Projected cost of the new regulations or changes to existing regulations on localities.</p>	<p>None</p>
<p>Description of the individuals, businesses, or other entities likely to be affected by the new regulations or changes to existing regulations.</p>	<p>The entities that are likely to be affected by these regulations would be all persons applying for or maintaining licensure by the Board of Counseling.</p>
<p>Agency’s best estimate of the number of such entities that will be affected. Please 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.</p>	<p>Current licensees: LPC – 4383 MFT – 847 SATP – 176 CSAC – 1685 SACA - 170 CRP - 250 From 11/3/15 to 2/12/16, there were 174 applications in all categories of licensure and certification. The number of such entities that are small business is unknown. Many of the licensed persons are independent practitioners, but some work for large hospital systems, government agencies or in other settings. Certified substance abuse counselors and assistants do not practice independently and would be employees of government agencies, health care systems, etc.</p>
<p>All projected costs of the new regulations or changes to existing regulations for affected individuals, businesses, or other</p>	<p>Renewal fees for the three licensed professions will increase from \$105 to \$130; for the certified professions, the increase will be from \$55 to \$65.</p>

<p>entities. Please be specific and include all costs including: a) the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; and b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.</p>	<p>Application and initial licensure fees for the licensed professions will increase from \$140 to \$175; for the certified professions, the increase will be from \$90 to \$115. All other fees will be increased by approximately 25%.</p>
<p>Beneficial impact the regulation is designed to produce.</p>	<p>Sufficient revenue to pay for the Board’s share of increases in allocated and direct costs to avoid delays in licensing and adjudication of cases.</p>

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. 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 regulation.

§ 54.1-113 of the *Code of Virginia* requires that at the end of each biennium, an analysis of revenues and expenditures of each regulatory board shall be performed. It is necessary that each board have sufficient revenue to cover its expenditures. Since the fees from licensees will no longer generate sufficient funds to pay operating expenses for the Board, consideration of a fee increase is essential. In order to have sufficient funding for the operation of the Board by fiscal year 2018, it is necessary to begin the process of promulgating amendments to regulations.

Fees charged to applicants and licensees of the Board of Counseling **have not been increased in over 15 years**. During that time period, there have been **four reductions in renewal fees**. Expenditures of the Board were not as great as projected largely because the Board has been substantially under-staffed. As staffing issues have been addressed, expenditures have increased and now exceed revenues. While the Board has maintained a positive cash balance due to carry-over revenue, expenditures exceeded revenue in FY15. The imbalance will continue to grow in the next biennium and beyond. Therefore, the Board will have a shortfall in its budget by 2018. Since it has taken in excess of four years to promulgate regulations for a fee increase for other boards, Counseling must begin the process of amending regulations to avoid the additional fee assessments that other boards had to adopt.

The Department of Health Professions could consider two possible solutions to the anticipated deficit of the Board; they are as follows:

1. Increase fees through the promulgation of regulations.

As required by law, the board is obligated to establish and collect fees that are necessary to fund operations of the board and the Department. An alternative is to seek the revenue from licensees and applicants to fully fund appropriated expenditures. Costs of services will be paid by consumers who use the services of providers, but licensure fees represent a miniscule percentage

of the over-all costs of health care. The cost of operation of regulatory boards does not significantly affect the cost or access to health care. However, failure to fully fund the licensing and disciplinary services through fees will have a detrimental effect on quality and availability of services.

2. Reduce department/board operations and staff and remain at current fee level.

In order to prevent deficit spending, the department would need to lay off staff to reduce expenses associated with operations. The net result being a delay in the performance of or the elimination of the following responsibilities:

- Investigations and discipline
- Examinations leading to license
- License renewals
- Regulation

Delays in licensing and investigation could place the public at risk as victims of unscrupulous practitioners and could increase costs as new licensees would not be available. It is believed that these consequences would not be acceptable to the administration, the General Assembly, or to the general public.

The Board of Counseling has been understaffed for several years; any further reduction would be extremely detrimental to the public. The consequence of understaffing has been substantial delays in licensing decisions and adjudication of disciplinary cases. To address the backlog of applications and cases, positions are being filled and expenditures of the Board are increasing and will continue to increase in the next several years. Therefore, the option of reductions in board operations and staffing is unacceptable and cannot be chosen.

Regulatory flexibility analysis

Pursuant to § 2.2-4007.1B of the Code of Virginia, please 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) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of 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 proposed regulation.

As it is a non-general fund agency, there are no alternative methods to provide adequate revenue for the Board of Counseling to fund its direct and allocated expenditures within the Department of Health Professions.

Public comment

There was a public comment period on the NOIRA from 11/30/15 to 12/30/15; no comments were received.

Family impact

Please assess the impact of this regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse, and one’s children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

There is no impact on the institution of the family and family stability.

Detail of changes

Please list all changes that are being proposed and the consequences of the proposed changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action.

Rationale for the proposed changes:

Currently, direct and allocated expenditures exceed the Board’s revenue. Because it has accumulated a surplus, its expenditures can be funded. However, under the current fee structure, the Board is projected to have a shortfall in its budget by June 30, 2019 of (\$30,105), and that is expected to increase to (\$339,084) by June 30, 2021. Therefore, the Board must begin the regulatory process for increasing its fees.

The Board considered three options: 15%, 25% and 30%. With a 15% increase, the Board would not have sufficient revenue to meet expenditures and still experience a shortfall in FY20, which would increase in coming years. With a 30% increase, the Board would have excess revenue and would likely need to have a fee reduction in coming years. With a 25% increase, the Board revenue is projected to be approximately \$4,000 in excess of expenditures in FY20 and \$15,000 of excess in FY21. An increase of 25% for all fees and license types will provide the Board with adequate funding for the foreseeable future and should avoid the need for increases or reductions in fees.

The impact of the fee increase should not be significant. For LPC’s, MFT’s, and LSATP’s, the annual renewal fee will increase by \$25. For certified professions, the increase will be \$10. With the exception of NC where the renewal fee is similar to VA, licensure renewal fees in neighboring states exceed the proposed increase in Virginia – ranging from \$275 in MD to \$145 in DC. Fees for these professions ***have not been increased in over 15 years***. During that time period, there have been ***four reductions in renewal fees***.

Chapter 20 – Licensed professional counselor

Current section	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
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number		
20	Sets current fees	Active annual license renewal \$105 \$130 Inactive annual license renewal \$55 \$65 Initial licensure by examination: Application processing and initial licensure \$140 \$175 Initial licensure by endorsement: Application processing and initial licensure \$140 \$175 Registration of supervision \$50 \$65 Add or change supervisor \$25 \$30 Duplicate license \$5 \$10 Verification of licensure to another jurisdiction \$25 \$30 Late renewal \$35 \$45 Reinstatement of a lapsed license \$165 \$200 Replacement of or additional wall certificate \$15 \$25 Returned check \$35 Reinstatement following revocation or suspension \$500 \$600

Chapter 30 – Substance abuse counselor

Current section number	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
30	Sets current fees	Substance abuse counselor annual certification renewal \$55 \$65 Substance abuse counseling assistant annual certification renewal \$40 \$50 Substance abuse counselor initial certification by examination: Application processing and initial certification \$90 \$115 Substance abuse counseling assistant initial certification by examination: Application processing and initial certification \$90 \$115 Initial certification by endorsement of substance abuse counselors: Application processing and initial certification \$90 \$115 Registration of supervision \$50 \$65

		Add or change supervisor \$25\$30 Duplicate certificate \$5\$10 Late renewal \$20\$25 Reinstatement of a lapsed certificate \$100\$125 Replacement of or additional wall certificate \$15\$25 Returned check \$35 Reinstatement following revocation or suspension \$500\$600
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Chapter 40 – Rehabilitation counselor

Current section number	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
20	Sets current fees	Initial certification by examination: Processing and initial certification \$90\$115 Initial certification by endorsement: Processing and initial certification \$90\$115 Certification renewal \$55\$65 Duplicate certificate \$5\$10 Late renewal \$20\$25 Reinstatement of a lapsed certificate \$100\$125 Replacement of or additional wall certificate \$15\$25 Returned check \$35 Reinstatement following revocation or suspension \$500\$600

Chapter 50 – Marriage and family therapist

Current section number	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
20	Sets current fees	Registration of supervision \$50\$65 Add or change supervisor \$25\$30 Initial licensure by examination: Processing and initial licensure \$140\$175 Initial licensure by endorsement: Processing and initial licensure \$140\$175 Active annual license renewal \$105\$130 Inactive annual license renewal \$55\$65 Penalty for late renewal \$35\$45 Reinstatement of a lapsed license \$165\$200

