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Final Regulation Agency Background Document

Agency name	Board of Social Work, Department of Health Professions
Virginia Administrative Code (VAC) citation(s)	18VAC140-20-10 et seq.
Regulation title(s)	Regulations Governing the Practice of Social Work
Action title	Increase in fees
Date this document prepared	2/20/15

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 of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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.

Proposed amendments reflect increases in the application and renewal fees, fees charged for late renewal, administrative fees, and reinstatement after disciplinary action. The renewal cycle is changed from biennial to annual, but the verification of continuing education remains on a two-year cycle.

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.

N/A

Statement of final agency action

Please 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 February 20, 2015, the Board of Social Work adopted final amendments to 18VAC140-20-10 et seq., Regulations Governing the Practice of Social Work.

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.

18VAC140-20-10 et seq. Regulations Governing the Practice of Social Work 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 **proposed 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 Social Work to increase its fees to cover expenses for essential functions of licensing, investigation of complaints against licensees, and adjudication of disciplinary cases to protect the health and safety of clients and patients who receive social work and clinical services in the Commonwealth.

§ 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. In the FY09 fiscal year, the board collected biennial renewal fees, resulting in a balance of \$404,324. However, the combination of income in FY10 and FY11 does not equal the combined expenditures for those fiscal years. At the time the NOIRA was adopted, it was projected that the board may conclude the FY14 fiscal year with a deficit of (\$124,132) and that the board will continue to have deficits through the fiscal years going forward. In fact, the Board concluded 2014 with a deficit of (197,649), due in part to an increase in informal proceedings and credentials appeals.

Since 2015 is a renewal year under the current biennial renewal, the increased revenue from this action will not be fully available until the 2017 renewal year. Therefore, the cash balance as of June 30, 2016 is projected to be (\$217,436). The Board of Social Work has not imposed a fee increase on its licensees since 1998; by the time the increase in renewal fees is implemented, there will be 19 years since those fees have been raised. Any further delay in approval of the increase will render the revenue insufficient to cover expenditures of the Board.

Since the fees from licensees no longer generate sufficient funds to pay operating expenses for the board, adoption of a fee increase is essential to continue licensing, investigating and disciplining social workers for the protection of public health and safety.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both.

Amendments reflect an increase in the application and renewal fees, fees charged for late renewal, administrative fees, and reinstatement after disciplinary action. The renewal cycle is changed from biennial to annual, but the verification of continuing education remains on a two-year cycle.

An application and licensure fee will increase from \$100 to \$165 for a licensed clinical social worker, and from \$100 to \$115 for a licensed social worker. Renewal fees will change from \$125 biennially to \$90 annually for a licensed clinical social worker, and from \$110 biennially to \$65 annually for a licensed social worker.

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 at the conclusion of 2014 and the projections for the future, 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 are mitigated by moving from a biennial to an annual license and should not significantly impact the cost of social work services for Virginians.
- 2) There are no disadvantages to the agency; the advantage would be that fees would be sufficient to cover expenditures, especially significant increases in IT services, 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 applicable federal requirements.

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.

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.

The proposed regulatory action would not strengthen or erode the authority and rights of parents, encourage or discourage economic self-sufficiency, or strengthen or erode the marital commitment. There could be a very modest decrease in disposable family income for licensees depending on the license held; for a licensed clinical social worker, the increase in renewal would equal \$27.50 per year, and for a licensed social worker, the increase would equal \$10 per year.

Changes made since the proposed stage

*Please list all changes that made to the text of the proposed regulation and the rationale for the changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. *Please put an asterisk next to any substantive changes.*

There were no changes made to the text of the proposed regulation.

Public comment

Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate. Please distinguish between comments received on Town Hall versus those made in a public hearing or submitted directly to the agency or board.

Commenter	Comment	Agency response
Kathleen Levenston	Burden on licensees when reimbursement rates are lower and salaries stagnant	The Board has not increased renewal fees since 1998; the proposed increase would amount to \$27.50 per year for licensed clinical social workers and \$10 for licensed social workers. The Board has handled its expenditures frugally but cannot continue to do its work with 1998 revenue.
Christine Lee	Opposes; barrier to social workers who practice in Virginia; may lose them to D.C. or Maryland.	The fee for renewal of a clinical license in Maryland is \$225 plus \$36 for a user fee for a total of \$261. The proposed fee in Virginia is \$90 so it is unlikely that we will lose licensees to Maryland.
Katie Hellebush NASW – VA	Opposes; questions need for increase and requests gradual implementation	Rationale for increase has been explained in ABD and fully discussed by the Board with the Budget Manager for the Department. The

		proposed fee increase for renewal would not be applicable until 2017, so there is ample time for licensees to prepare. Additionally, licensees will actually have a reduction in the fee for 2017, so they will not experience any increase until 2018 with an annual renewal.
Joseph Lynch	Notes two factors contributing to the need for a fee increase – the contract for IT services through VITA, and the transfer of licensing fees to the General Fund. Also noted was the delay in getting approval for the publication of regulations.	The Board acknowledges the comment and notes that the factors described were out of the control of the Board or the Department.

All changes made in this regulatory action

Please list all changes that are being proposed and the consequences of the proposed changes. Describe new provisions and/or all changes to existing sections. Explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation

Current section number	Current requirement	Proposed change, rationale, and consequences
30	Establishes all fees charged to applicants and licensees	<p>In subsection A, the following changes are proposed:</p> <ol style="list-style-type: none"> Registration of supervision - \$25 <u>50</u> <u>Add/change of supervision - \$25</u> <p><i>The process of registration of supervision is complex with requirements for checking the eligibility of the registrant and qualifications of the supervisor. Currently, the same fee is charged for initial registration and for any change or additional supervisor. In the proposed regulation, the fees would be proportional to the amount of staff/board time involved in approval of supervision.</i></p> <ol style="list-style-type: none"> Application processing <u>Licensed clinical social worker - \$100</u> <u>165</u> <u>Licensed social worker - \$100</u> <u>115</u> <p><i>According to Principles for Fee Development, adopted by the Department in 1999, an application fee should cover the cost of credentials review and the initial licensure. A newly licensed social worker would not be required to renew his license for at least one year. Since the application fee includes a year of licensure for a licensed clinical social worker, the remaining \$75 covers all costs relating to collection of documentation, review of application packages, responding to applicant calls and emails and, for the non-routine applications, a hearing before a credential committee.</i></p> <ol style="list-style-type: none"> Biennial <u>Annual</u> license renewal

		<ul style="list-style-type: none"> a. Registered social worker - \$35 <u>25</u> b. Associate social worker - \$35 <u>25</u> c. Licensed social worker - \$110 <u>65</u> d. Licensed clinical social worker - \$125 <u>90</u> <p><i>The Board proposes changing from a biennial renewal to an annual renewal. Revenue is more predictable and steadier. Generally revenue from an annual renewal is expected to be slightly higher than a biennial renewal because the Board may derive revenue from persons on an annual basis who would have retired, moved away or changed professions by the time a biennial renewal is due. An annual renewal is easier for licensees to remember and less burdensome in terms of cost. It is also consistent with counseling and psychology, as well as most other health regulatory boards. Annual renewals typically ensure more accurate address and emails, since most licensees update personal information at the time of renewal. Since most of the renewal process is automated, the cost of annual renewals versus biennial renewal is minimal and is more than offset by increased revenue. For a licensed clinical social worker, the increase in renewal would equal \$27.50 per year, and for a licensed social worker, the increase would equal \$10 per year.</i></p> <p><i>An annual renewal prevents wide swings in cash flow. For example, in June of 2013 (the month biennial renewal income was received), the cash balance was \$417,698. By June of 2014, the cash balance was down to \$42,406, and by December of 2014, the cash balance was (\$197,649).</i></p> <ul style="list-style-type: none"> 4. Penalty for late renewal - \$10 <ul style="list-style-type: none"> a. Registered social worker <u>\$10</u> b. Associate social worker <u>\$10</u> c. Licensed social worker <u>\$20</u> d. Licensed clinical social worker <u>\$30</u> <p><i>Currently, the late fee is \$10, regardless of the type of license or renewal fee owed. Fee Principles for the Department state that a late fee should be approximately 1/3 of the renewal fee, so the proposed fees are proportional depending on the type of license.</i></p> <ul style="list-style-type: none"> 5. Verification of license to another jurisdiction - \$40 <u>25</u> 6. Additional or replacement licenses - \$40 <u>15</u> 7. Additional or replacement wall certificates - \$45 <u>25</u> <p><i>Fees for verification of license, replacement of licenses or wall certificates should be based on administrative costs for performing such functions and should be relatively consistent across boards. The current fees for Social Work were inconsistently low and insufficient to cover the costs for those functions.</i></p> <ul style="list-style-type: none"> 9. Reinstatement following disciplinary action - \$200 <u>500</u>
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		<i>In order to reinstate a license that has been suspended or revoked, it is necessary to conduct an investigation of the practitioner to determine whether he has practiced during that time and whether he is ready to resume safe, ethical practice. The cost for that investigation should be largely borne by the practitioner seeking to have his license restored.</i>
100	Sets out requirements and schedule for licensure renewal	<p>Subsection A is amended to eliminate the odd year renewal and change to an annual renewal.</p> <p><i>A discussion of annual versus biennial renewal is stated above. Since licensees who renew by June 30, 2015 have paid for a biennial renewal, the change to an annual renewal with the increased fee would become effective for the 2017 renewal.</i></p>
105	Sets out requirements for continuing competency of licensees	<p>Subsection A is amended to require completion of the same number of hours as currently required for biennial renewal. Verification of completion will only be requested in even years.</p>
106	Sets requirements for compliance with continuing education	<p>Subsection A currently requires all licensees in active status to maintain original documentation of CE for a period of five years following renewal. That requirement is modified to three years.</p> <p>In subsection B, the requirement for a random audit is modified to provide authorization for an audit.</p> <p><i>Following renewal in the even years, the Board would have the option of conducting a random audit of the past two years of CE. Three-year maintenance of documentation should be sufficient. Depending on budget considerations, the Board may choose not to do a random audit after one cycle, or the Board may choose to audit only those licensees who have been found in violation of law and regulation in the past two years.</i></p>
110	Sets out requirements for late renewal and reinstatement	<p>Subsection A is amended to set a late renewal for one year after expiration versus the current rule of four years after expiration. Language is also amended for consistency with an annual renewal.</p> <p><i>Fee Principles for the Department set the policy for late renewal to be renewal within one renewal cycle; therefore, regulations are amended to allow late renewal of social workers for one year after the expiration date. After that period, a person must reinstate his license.</i></p> <p>Subsection B is amended to establish the composition of the reinstatement fee (which is not stated in the fee section) as the application processing fee plus the late fee.</p> <p>Subsection C corrects an omission in which the category of “clinical social worker” was not specified.</p>
150	Sets the renewal of registered and associate social workers	<p>The two categories of social work regulation in section 150 are no longer offered, but persons who held the titles of registered social worker and associate social worker are allowed to renew. The regulation is changed for consistency with annual renewal.</p>

