



**-Virginia
Regulatory
Town Hall**

Final Regulation Agency Background Document

Agency Name:	Department of Health Professions – Board of Licensed Professional Counselors, Marriage and Family Therapists and Substance Abuse Professionals
VAC Chapter Number:	18 VAC 115-20-10 et seq.
Regulation Title:	Regulations Governing the Practice of Professional Counseling
Action Title:	Increase Fees
Date:	

Please refer to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99) , and the *Virginia Register Form, Style and Procedure Manual* for more information and other materials required to be submitted in the final regulatory action package.

Summary

Please provide a brief summary of the new regulation, amendments to an existing regulation, or the regulation being repealed. There is no need to state each provision or amendment; instead give a summary of the regulatory action. If applicable, generally describe the existing regulation. Do not restate the regulation or the purpose and intent of the regulation in the summary. Rather, alert the reader to all substantive matters or changes contained in the proposed new regulation, amendments to an existing regulation, or the regulation being repealed. Please briefly and generally summarize any substantive changes made since the proposed action was published.

The Board has adopted a new fee structure to comply with a statutory requirement that fees be sufficient to cover board expenditures. The fee structure has been determined in accordance with new *Principles for Fee Development* which are being used to develop fee structures for all boards in the Department of Health Professions. Overall, this will result in an increase in fees for services provided by the Board. For example, the renewal fee will increase from \$75 per biennium to \$105 per year. An initial licensure fee of \$65 will be established for first-time licensees. A new flat fee of \$165 for reinstatement of a license lapsed more than one year is replaces the current requirement to reapply under the current regulations. The regulation also includes a fee of \$500 for reinstatement of a license following disciplinary action which resulted in revocation or suspension of a license.

Changes Made Since the Proposed Stage

Please detail any changes, other than strictly editorial changes, made to the text of the proposed regulation since its publication. Please provide citations of the sections of the proposed regulation that have been altered since the proposed stage and a statement of the purpose of each change.

Changes to 18 VAC 115-20-40 that were published as proposed regulations on November 22, 1999 do not appear in the final regulation because they have been incorporated with another review that will be published as final regulations in the same volume and issue as this final regulation. A minor amendment to subsection C of 18 VAC 115-20-100 sets forth a change of address notification requirement for licensees. This amendment was published as proposed regulation on September 27, 1999 under previously review mentioned previously.

Statement of Final Agency Action

Please provide a statement of the final action taken by the agency: including the date the action was taken, the name of the agency taking the action, and the title of the regulation.

On February 18, 2000, the Board of Licensed Professional Counselors, Marriage and Family Therapists and Substance Abuse Professionals adopted final regulations 18 VAC 115-20-10 et seq., Regulations Governing the Practice of Professional Counseling, completing fee changes in compliance with a statutory mandate that the Board collect sufficient fees to cover the cost of administration of the regulatory program.

Basis

Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority, shall be provided. If the final text differs from that of the proposed, please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the final regulation and that it comports with applicable state and/or federal law

Chapter 24 of Title 54.1 establishes the general powers and duties of health regulatory boards including the responsibility to promulgate regulations and levy fees:

§ 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 or licensure 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 or license qualified applicants as practitioners of the particular profession or professions regulated by such board.*
4. *To establish schedules for renewals of registration, certification and licensure.*
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 and Chapter 25 of this title.*
7. *To revoke, suspend, restrict, or refuse to issue or renew a registration, certificate or license which such board has authority to issue for causes enumerated in applicable law and regulations.*
8. *To appoint designees from their membership or immediate staff to coordinate with the Intervention Program Committee and to implement, as is necessary, the provisions of Chapter 25.1 (§ 54.1-2515 et seq.) of this title. Each health regulatory board shall appoint one such designee.*
9. *To take appropriate disciplinary action for violations of applicable law and regulations.*
10. *To appoint a special conference committee, composed of not less than two members of a health regulatory board, to act in accordance with § 9-6.14:11 upon receipt of information that a practitioner of the appropriate board may be subject to disciplinary action. The special conference committee may (i) exonerate the practitioner; (ii) reinstate the practitioner; (iii) place the practitioner on probation with such terms as it may deem appropriate; (iv) reprimand the practitioner; (v) modify a previous order; and (vi) impose a monetary penalty pursuant to § 54.1-2401. The order of the special conference committee shall become final thirty days after service of the order unless a written request to the board for a hearing is received within such time. If service of the decision to a party is accomplished by mail, three days shall be added to the thirty-day period. Upon receiving a timely written request for a hearing, the board or a panel of the board shall then proceed with a hearing as provided in § 9-6.14:12, and the action of the committee shall be vacated. This subdivision shall not be construed to affect the authority or procedures of the Boards of Medicine and Nursing pursuant to §§ 54.1-2919 and 54.1-3010.*
11. *To convene, at their discretion, a panel consisting of at least five board members or, if a quorum of the board is less than five members, consisting of a quorum of the members to conduct formal proceedings pursuant to § 9-6.14:12, decide the case, and issue a final agency case decision. Any decision rendered by majority vote of such panel shall have the same effect as if made by the full board and shall be subject to court review in accordance*

with the Administrative Process Act. No member who participates in an informal proceeding conducted in accordance with § 9-6.14:11 shall serve on a panel conducting formal proceedings pursuant to § 9-6.14:12 to consider the same matter.

12. *To issue inactive licenses and certificates and promulgate regulations to carry out such purpose. Such regulations shall include, but not be limited to, the qualifications, renewal fees, and conditions for reactivation of such licenses or certificates.*

Under § 54.1-113 increasing fees is mandatory when expenses are more than ten percent greater than revenue. However the Board may exercise discretion in the amount and type of fees which 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.*

These web site address for the text of these statutes is <http://leg1.state.va.us>.

Purpose

Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the final regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.

§ 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. It is projected that by the close of the 1998-2000 biennium, the Board will incur a deficit of \$467,806 or 46% of its total budget for the all programs, and that the deficit will grow to 979,161 or 84% at the end of the 200-2002 biennium, and to 1,513,721 or 123% by the end of the 2002-2004 biennium. Since the fees from licensees no longer generate sufficient funds to pay operating expenses for the Board, a fee increase is essential.

Several factors have contributed to this projected deficit. At the end of the 1992-1994 biennium, the agency's Finance Office identified a 50% surplus in the Board's revenue, which resulted in action by the Board to reduce renewal fees. The Board reduced renewal fees from \$85 annually to \$75 biennially for professional counselor licensure, and from \$40 annually to \$40 biennially for substance abuse counselor certification. These reductions took effect in January, 1997, and were the lowest renewal fees for these credentials since 1982. During the 1996-1998 biennium, the Board's projected budget increased by 33 % due primarily to a doubling in the Board size and increased Board meeting activities for two new licensure programs, salary and fringe increases due to position reallocations, and increases in data processing costs. In addition, due to the increased number of occupations established under the Board, an increased proportion of staff time in the Behavioral Sciences Unit was being devoted to the Board, resulting in a shift of limited allocations for the Executive Director and Deputy Executive Director from 30% to 50%. Also, one staff member whose time was split evenly among three boards was shifted to 100% devoted to the Board of Licensed Professional Counselors, Marriage and Family Therapists and Substance Abuse Professionals. At the same time, the Board's revenue decreased primarily due to the decreased renewal fees and the loss of renewal fees from 1000 certified rehabilitation providers who declined to renew their certification after a statute change in 1997 made them ineligible for certification beyond July, 2000. Further reductions in revenue are projected in future biennia due to an unexpected lack of interest in the marriage and family therapist

licensure category following the initial “grandfathering” year. The Board is also experiencing reductions in the numbers of applicants for substance abuse counselor certification, probably due to anticipation of the upcoming licensure for substance abuse treatment practitioners which should be in effect by Spring, 2000.

Because of the increased expenditures and reduced revenues, the Board is now compelled to increase fees for professional counselor licensure and substance abuse certification to approximately the pre-1997 levels, and to increase application and renewal fees for all categories of licensure and certification according to the *Principles for Fee Development*. Because the current process for correcting deficits is slow, the Board is changing its biennial renewal cycle to annual renewal cycles for all professions to provide for faster adjustments in the budget. While that is a disadvantage to the licensees, the alternative of reduced services for the Board would be unacceptable to applicants, licensees and the general public. As a specially funded agency, renewal fees pay the vast majority of the expenses of Board operations, which include investigation of complaints against licensees and certificate holders, adjudication of disciplinary cases, verification of licensure to other jurisdictions and entities, and communications with licensees and certificate holders about current practice and regulation. Adequate funding is essential to carry out the investigative and disciplinary activities of the Board in order to protect the public health, safety and welfare.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement of the regulatory action's detail.

The amendment increases the renewal fee from \$75 per biennium to \$105 per year. A new initial licensure fee has been included based on the average time from issuance of the initial license to the first renewal.

The amended fee for a license lapsed less than one year is composed of the renewal fee plus 35%. For licenses which have lapsed one renewal period, the board is establishing a reinstatement requirement with a fee based on a credential review fee, the late fee, and ½ of the current renewal fee, since the reissue is likely to take place after part of the renewal period has already passed. This will replace the current reinstatement requirement of paying the renewal fee and late penalty fee for each year the license has lapsed.

A new fee is established for reinstatement of a license which has been suspended or revoked to cover the estimated cost of a hearing, including Board member per diems, staff time and associated expenses

Fees for replacement of a duplicate license, duplicate certificate, and processing and collecting on a bad check were based on cost estimates provided by the Deputy Director for Finance of the Department that will be standardized among all boards in the agency.

Issues

Please provide a statement identifying the issues associated with the final regulatory action. The term “issues” means: 1) the advantages and disadvantages to the public of implementing the new provisions; 2) the 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 include a sentence to that effect.

An analysis of revenues and expenditures conducted at the end of the 1996-1998 biennium projected that under the current fee structure, the Board would face a 46% deficit at the end of the 1998-2000 biennium, an 84% deficit at the close of the 2000-2002 biennium, and a 123% deficit at the close of the 2000-2004 biennium. In order to remain in

compliance with §54.1-113 of the Code of Virginia, the Board adopted a proposal for fee increases that will offset the projected deficit through 2004.

In developing the fee proposal, the agency's Finance Office used a new set of principles by which all boards are guided in the development of regulations. *The Principles for Fee Development* are intended to provide structure, consistency, and equity for all professionals regulated within the Department. In consideration of various alternatives and issues surrounding the adoption of fees, the *Principles* served to guide the Board in the development of appropriate and necessary fees.

ISSUE 1. Uniformity in renewal and application fees across professions.

As is stated in the *Principles*, renewal fees for all occupations regulated by a board should be consistent across occupations unless there is clear evidence to indicate otherwise. Professional counselors, marriage and family therapists and substance abuse treatment practitioners are all licensed for the independent delivery of mental health services. As a result, the relative numbers and kinds of disciplinary problems encountered by these professions is similar, and the cost of administering the disciplinary programs is also similar. Therefore, the Board is establishing the same renewal fee for all three licensure categories. Likewise, the Board is establishing the same fee for the new licensure category of substance abuse treatment practitioner. Because application and registration of supervision reviews of professional counselor applicants are performed by a vendor, with fees established in contract and paid to the vendor, no review fees are attributed to the initial licensure fee for these applicants.

Advantages and disadvantages to the licensees

All licensees will experience increased renewal fees under the amended regulations. In 1997, the Board reduced its renewal fees from \$85 annually to \$75 biennially for professional counselor licensure, and from \$40 annually to \$40 biennially for substance abuse counselor certification in response to a projected revenue surplus. Because of significant drops in renewals for certified rehabilitation providers and in applications for marriage and family therapist licensure, the budget projections now require that the fees be returned to approximately the pre-1997 levels. While that is a disadvantage to the licensees, the alternative of reduced services for the Board would be unacceptable to applicants, licensees and the general public. As a specially funded agency, renewal fees pay the vast majority of the expenses of Board operations, which include investigation of complaints against licensees and certificate holders, adjudication of disciplinary cases, verification of licensure and education to other jurisdictions and entities, and communications with licensees and certificate holders about current practice and regulation.

ISSUE 2: Establishment of initial licensure fees.

For all professions governed by the Board, the initial licensure fee has historically been considered part of the application fee. This allowed for immediate processing of the license following notification of a passing exam score for an applicant. However, the fee was not developed according to any set formula consistent among boards in the agency. Additionally, recent outsourcing of the credentials review services to vendors resulted in initial licensure of individuals with no monies collected by the Board to cover the portion of the renewal period remaining. The credentials review fee is established in the contract and paid to the vendor, and is therefore not included in the amended regulations.

One method of assessing an initial licensure fee is prorating the fee based on the amount of time remaining in the renewal period. The Board did not establish prorated fees because other boards in the agency have determined that the additional steps involved (assessing fee, notifying applicant, processing check, notifying applicant again check is not mailed until the next fee period begins, etc.) result in delays in licensure processing and can create more burden and lost income for the applicant than any benefit from the prorated fees. In the amended regulations, all applicants will be assessed a fee to cover ½ of the renewal period, which is the average initial licensure period.

Advantages and disadvantages to the licensees

As is stated above, the advantage of not prorating fees is that initial licensure can occur in a more timely manner. For those who are applying for licensure by examination, the license is issued as soon as examination results are forwarded

to the Board, usually within one or two working days. For those applying for licensure by endorsement, a license is typically issued within one or two days of receipt of all verifying documentation.

ISSUE 3. Establishment of application and initial licensure fee for licensure by examination versus licensure by endorsement.

The regulations include fees for application and licensure by examination and by endorsement. These fees are identical in each regulation; however, by separating the fees, any future administrative changes that may alter the way the applications are reviewed can be reflected in the fees. For all professions, examinations fees are paid directly to the examination services, and are not included as part of the initial licensure fee.

Advantages and disadvantages to the licensees

Setting the fees out separately will prevent confusion for applicants who may be expecting an additional cost for endorsement review. Since the review process will be the same, (vendors will make recommendations to the Board regarding endorsement applicants), there is no need for a difference in the fees. However, should the review process change for any reason, the regulations will be formatted to accommodate any differences. There are no disadvantages.

ISSUE 4. Establishment of different fees for renewing an expired license versus reinstating a lapsed license.

Currently, the Board's regulations require reapplication and payment of back fees and penalty fees for each lapsed renewal cycle. In conformance with the *Principles for Fee Development*, the Board is establishing a penalty fee assessed at 35% of the renewal fee for licenses which have lapsed one renewal period, and a reinstatement application requirement for individuals whose licenses have lapsed beyond one renewal period. Since a reinstatement application is required for a licensee to reinstate a lapsed license, the reinstatement fee includes the current renewal fee, the late fee, and a credential review fee.

Advantages and disadvantages to the licensees

The penalty fee for late renewal within the first renewal period will increase, which is a disadvantage to licensees. However, the new regulation presents an advantage for individuals whose licenses have lapsed more than one renewal period, and allows the Board to use discretion as to whether an individual has maintained competency to perform the functions within the scope of practice of the license. For individuals who hold multiple licenses, the amendment establishes a consistent policy for each license held.

ISSUE 5. Reinstatement after revocation

Reinstatement of a license which has been suspended or revoked necessitates an additional cost of a hearing before a panel of the Board. The estimated cost of a hearing, including Board member per diems, staff time and associated expenses is approximately \$500. The Board's amendment compels individuals whose licenses have been suspended or revoked to incur the cost of the reinstatement hearing if they seek reinstatement.

ISSUE 6. Uniformity among boards for setting miscellaneous fees.

The *Principles* call for uniformity among boards and regulated entities in setting fees for miscellaneous activities of the Board. The Board fees for replacement of a duplicate license, duplicate certificate, and processing and collecting on a bad check are based on cost estimates provided by the Deputy Director for Finance of the Department that will be standardized among all boards in the agency.

Advantages and disadvantages to the licensees

The advantage of the regulations is that all persons licensed or certified by a board under the Department of Health Professions will consistently pay a fee for miscellaneous activities determined by actual costs for that activity. There will not be inconsistent fees for licensees regulated under different boards.

Advantage or disadvantages to the public

Fee increases should have no disadvantage to the consuming public. Although the increase in renewal fees is significant, it represents a return to the fees prior to the fee decrease in 1997. The Board has also adopted final regulations to increase fees for marriage and family therapist licensure and substance abuse treatment practitioner licensure based on the equivalency to the professional counselor license in terms of costs to administer the licensure programs.

There would be considerable disadvantages to the public if the Board took no action to address its deficit and increase fees to cover its expenses. The only alternative currently available under the Code of Virginia would be a reduction in services and staff, which would result in delays in licensing applicants who would be unable to work and delays in approval or disapproval of education programs. Potentially, the most serious consequence would be a reduction in or reprioritization of the investigation of complaints against regulated individuals. In addition, there may be delays in adjudicating cases of violations of the standards of practice, resulting in potential danger to clients who are often emotionally vulnerable to unscrupulous practitioners..

Public Comment

Please summarize all public comment received during the public comment period and provide the agency response. If no public comment was received, please include a statement indicating that fact.

No written or verbal public comment on the proposed fee changes was received during the 60 day public comment period.

Detail of Changes

Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or crosswalk - of changes implemented by the proposed regulatory action. Include citations to the specific sections of an existing regulation being amended and explain the consequences of the changes.

18 VAC 115-20-20. Fees required by the Board.

Fees are amended as follows:

- The renewal fee will increase from the current \$75 biennial renewal to a \$105 annual renewal, reflecting the cost of the administrative and disciplinary activities of the Board and the allocated costs of the Department.
- New initial licensure by examination and initial licensure by endorsement fees of \$65 are established to cover the licensure fee for ½ of a renewal period, which is the average initial licensure period for new licensees, and a \$10 fee for a wall certificate.
- The cost for producing and sending a duplicate license has been reduced, so the fee decreases from \$15 to \$5 and reflects the actual cost.
- An increase in the cost for verification of licensure to another jurisdiction from \$10 to \$25 is established to cover the administrative costs of retrieving and copying a file from the microfilm archive, and the mailing costs of the file.
- The late renewal penalty fee increases from \$10 to \$35 to establish a penalty fee that is 35% of the renewal fee in accordance with the agency's *Principles for Fee Development*.

- The regulation establishes a new fee of \$165 for reinstatement of a license that has lapsed beyond one full renewal period. This fee is based on the cost of Board review of the reinstatement application plus ½ of the annual renewal fee to cover the average time remaining in a renewal period, plus the penalty fee for late renewal.
- The returned check fee of \$25 is estimated to be the actual administrative costs for processing and collecting on a returned check; it is the same fee for all boards within the Department.
- A new fee of \$500 is established for reinstatement of a license that has been revoked or suspended following disciplinary action. This fee is based on the cost of the review of the background investigation and reinstatement application, and the cost of holding an informal conference to consider the reinstatement.
- The payment instruction is amended to clarify that some licensure processes are performed by a vendor, requiring payment of the fee to the vendor and not the Board, as set forth in the application instructions.

18 VAC 115-20-40. General requirements.

Changes to 18 VAC 115-20-40 that were published as proposed regulations on November 22, 1999 do not appear in the final regulation because they have been incorporated with another review that will be published as final regulations in the same volume and issue as this final regulation

18 VAC 115-20-100. Biennial renewal of licensure

Minor changes set forth the new annual renewal period, and a change of address notification requirement which was published in the *Virginia Register* September 27, 1999 under a separate regulatory review running parallel to this review.

18 VAC 115-20-110. Late renewal; reinstatement.

Amendments change the current term for late renewal without reinstatement from four years to one year. Beyond the one year renewal period, a reinstatement procedure is established, requiring application for reinstatement and payment of a reinstatement fee. The reinstatement fee is established based on the administrative and review costs which are the same as that determined for initial licensure, plus a late renewal fee. This is in conformance with the *Principles for Fee Development* for all boards within the Department.

18 VAC 115-20-150. Reinstatement following disciplinary action.

A minor change applies the same reinstatement procedure and fee to licenses that have been suspended, revoked or denied renewal.

Family Impact Statement

Please provide an analysis of the regulatory action that assesses the impact on the institution of the family and family stability including the extent to which 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 changes will have no effect on the authority or rights of parents in the education, nurturing and supervision of their children or on the economic self-sufficiency, self pride and assumption

of responsibility. Fee increases will allow the regulatory program to operate without delays, which may strengthen the marital commitment for individuals or their spouses who need counseling services. Although the increase of \$135 per year in the fee to renew and maintain a license to practice counseling is substantial, it is equivalent to the pre-1997 renewal fee, and should not negatively impact the cost of counseling services in Virginia, which did not decrease when the fees were reduced in 1997. The most significant impact will be on individuals who seek reinstatement after revocation or suspension of a license, but it is considered appropriate to have these costs borne by the offending licensee who voluntarily seeks reinstatement, rather than the entire population of licensees, the vast majority of which have not committed any offense.