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## Proposed 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>	Amendments resulting from 2022 periodic review
<b>Date this document prepared</b>	December 9, 2022; Amended November 3, 2023

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), 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.*

Following a periodic review initiated November 17, 2021, the Board identified several areas of Chapter 20 for amendment. Those amendments include: clarifying terminology and requirements for LCSWs, LMSWs, and LBSWs within the regulations; revising the definition of “ancillary services” for comprehensiveness and clarity; amending 18VAC140-20-150 to include diagnosing third parties as an action that constitutes unprofessional conduct and removing unprofessional conduct provisions that are redundant of statute; removing provisions, terms, and definitions that are redundant of statute; clarifying responsibilities of supervisors of LCSW candidates; and including additional organizations for approval of continuing education.

### 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.

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LCSW = licensed clinical social worker  
LMSW = licensed masters social worker  
LBSW = licensed baccalaureate social worker

## 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 the ORM procedures, "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."*

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The impetus for this regulatory action is implementation of recommendations from the Board's periodic review of regulations. A general notice was published with a listed comment period from December 20, 2021 to January 19, 2022. There were no comments received.

## 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.*

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

Virginia Code § 54.1-3705 lists the specific duties of the Board, which includes licensure and regulation of LCSW, LMSW, and LBSW.

## 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 is intended to solve.*

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The justification for these changes stems from the Board's periodic review of its regulations and a recognition that many provisions need to be reorganized, language needs to be updated, and situations the Board has seen in disciplinary cases need to be addressed in professional conduct regulations. The changes are necessary to protect the health, safety, and welfare of citizens because the General Assembly recognized that the practice of social work has the potential to harm members of the Commonwealth, and therefore ordered the Board to regulate the profession. The goals the changes are

intended to solve are listed in the first sentence: reorganization; updated language; and addressing situations seen by the Board in disciplinary cases.

## 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 amendments consist of: clarifying terminology and requirements for LCSWs, LMSWs, and LBSWs within the regulations; revising the definition of "ancillary services" for comprehensiveness and clarity; amending 18VAC140-20-150 to prohibit diagnosing third parties; removing redundant provisions, terms, and definitions; clarifying responsibilities of supervisors of LCSW candidates; include additional organizations for approval of continuing education; and cleaning up language and sentence structure to enhance clarity and readability.

## 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) There are no primary advantages or disadvantages to the public.
- 2) There are no primary advantages or disadvantages to the agency or the Commonwealth.
- 3) The Director of the Department of Health Professions has reviewed the proposal and performed a competitive impact analysis. Any restraint on competition as a result of promulgating these regulations is a foreseeable, inherent, and ordinary result of the statutory obligation of the Board to protect the safety and health of citizens of the Commonwealth and to license and regulate LCSWs, LMSWs, and LBSWs under Virginia Code § 54.1-3705. The Board is authorized under § 54.1-2400 "[t]o promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) which are reasonable and necessary to administer effectively the regulatory system . . . Such regulations shall not conflict with the purposes and intent of this chapter or of Chapter 1 (§ 54.1-100 et seq.) and Chapter 25 (§ 54.1-2500 et seq.) of this title." The promulgated regulations do not conflict with the purpose or intent of Chapters 1 or 25 of Title 54.1.

## Requirements More Restrictive than Federal

*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 requirements.

## Agencies, Localities, and Other Entities Particularly Affected

Consistent with § 2.2-4007.04 of the Code of Virginia, identify any other state agencies, localities, or other entities particularly affected by the regulatory change. Other entities could include local partners such as tribal governments, school boards, community services boards, and similar regional organizations. "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**

Consistent with § 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 the proposed 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 expected costs, savings, fees, or revenues to the agency from these regulatory changes.</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>There are no expected costs, savings, fees, or revenues to other state agencies from this regulatory change.</p>
<p><i>For all agencies:</i> Benefits the regulatory change is designed to produce.</p>	<p>There are no benefits.</p>

**Impact on Localities**

If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a or 2) on which it was reported. Information provided on that form need not be repeated here.

<p>Projected costs, savings, fees, or revenues resulting from the regulatory change.</p>	<p>There are no expected costs, savings, fees or revenues to localities from this regulatory change.</p>
<p>Benefits the regulatory change is designed to produce.</p>	<p>There are no expected benefits to localities from this regulatory change.</p>

**Impact on Other Entities**

If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a, 3, or 4) on which it was reported. Information provided on that form need not be repeated here.

<p>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.</p>	<p>The individuals affected by this change include LCSWs, LMSWs, and LBSWs, as well as supervisees working toward an LCSW.</p>
<p>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:</p> <ul style="list-style-type: none"> <li>a) is independently owned and operated, and;</li> <li>b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</li> </ul>	<p>As of September 30, 2022, there were 44 LBSWs, 1,032 LMSWs, and 8920 LCSWs in the Commonwealth. There were 2,949 individuals registered for supervision.</p>
<p>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:</p> <ul style="list-style-type: none"> <li>a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses;</li> <li>b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change;</li> <li>c) fees;</li> <li>d) purchases of equipment or services; and</li> <li>e) time required to comply with the requirements.</li> </ul>	<p>There is no projected cost for individuals, businesses, or other entities based on these changes.</p>
<p>Benefits the regulatory change is designed to produce.</p>	<p>There are no benefits to individuals, businesses, or entities that the changes are designed to produce.</p>

### 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.*

The Board is required to license social workers and promulgate standards of practice through the use of regulation. There is no alternative to a regulatory action to edit the regulations already in place.

### Regulatory Flexibility Analysis

*Consistent with § 2.2-4007.1 B 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.*

The amendments are necessary to modernize language and treatment of the practice of social work in regulation. 1) These amendments already reduce compliance requirements. 2) The amendments already reduce reporting requirements. 3) The amendments already simplify compliance. 4) There are no design or operational standards in the regulations. 5) The Board of Social Work does not regulate businesses of any kind.

**Periodic Review and Small Business Impact Review Report of Findings**

*If you are using this form to report the result of a periodic review/small business impact review that is being conducted as part of this regulatory action, and was announced during the NOIRA stage, indicate whether the regulatory change meets the criteria set out in EO 19 and the ORM procedures, e.g., is necessary for the protection of public health, safety, and welfare; minimizes the economic impact on small businesses consistent with the stated objectives of applicable law; and is clearly written and easily understandable. In addition, as required by § 2.2-4007.1 E and F of the Code of Virginia, discuss the agency’s consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, discuss why the agency’s decision, consistent with applicable law, will minimize the economic impact of regulations on small businesses.*

Not applicable.

**Public Comment**

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

There were no public comments.

**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.*

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, (ii) any alternative approaches, (iii) the potential impacts of the regulation, and (iv) the agency’s regulatory flexibility analysis stated in that section of the 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://www.townhall.virginia.gov>. Written comments must include the name and address of the commenter. Comments may also be submitted by mail, email or fax to Erin Barrett, Agency Regulatory Coordinator, 9960 Mayland Drive, Henrico, VA 23233 or [erin.barrett@dhp.virginia.gov](mailto:erin.barrett@dhp.virginia.gov) or by fax to (804) 915-0382. 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 the proposed stage of this regulatory action 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.

### 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.*

*If an existing VAC Chapter(s) is being amended or repealed, use Table 1 to describe the changes between the existing VAC Chapter(s) and the proposed regulation. If the 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	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
20-10	Contains definitions for the chapter.	<p>The definition of “ancillary services” is updated to delete case management and to add intervention in situations on a client’s behalf and participation in staff meetings. These amendments are consistent with the current practice of social work.</p> <p>The definition of “conversion therapy” is removed. The definition (and related unprofessional conduct provision, below) are not needed when the conduct is defined and prohibited by Virginia Code § 54.1-2409.5.</p> <p>“LCSW” is defined, similar to defined terms LBSW and LMSW.</p> <p>The definition of “nonexempt practice” is deleted. This term is not used in 18VAC140-20.</p>

		<p>“NPDB” is defined to allow the use of the acronym for the National Practitioner Data Bank throughout 18VAC140-20.</p>
20-30	Contains required fees.	The term “licensed clinical social worker” is replaced with the new defined term LCSW.
20-40	Contains requirements for licensure by examination as a licensed clinical social worker.	<p>The term “licensed clinical social worker” is replaced with LCSW.</p> <p>The defined term NPDB replaces the full name for the National Practitioner Data Bank.</p>
20-45	Contains requirements for licensure by endorsement.	The defined term NPDB replaces the full name for the National Practitioner Data Bank.
20-49	Contains educational requirements for licensed clinical social workers.	The term licensed clinical social worker is replaced by LCSW.
20-50	Contains experience requirements for licensure as a licensed clinical social worker.	<p>The term licensed clinical social worker is replaced by LCSW.</p> <p>(B) and (C) are amended to state that the provisions contains requirements for supervisors “for candidates for LCSW,” to clarify these requirements apply only to candidates for LCSW.</p> <p>(C) is also amended to add (9), which requires that the supervisor clarify the billing fee for supervision.</p>
20-51	Contains requirements for licensure by examination for LBSW and LMSW.	(B)(2)(c) is amended to replace the full name of the National Practitioner Data Bank with NPDB.
20-70	Contains examination requirements for all applicants.	<p>The term “clinical social worker” is replaced by LCSW.</p> <p>The requirement for LCSW examination is moved from (A)(1) to (A)(3). The requirement has not been amended, but the regulation now lists requirements for licensure levels from least advanced to most advanced.</p>
20-100	Contains requirements for licensure renewal.	Language limiting the requirements of (A) to begin in 2017 is deleted as no longer relevant.
20-105	Contains continued competency requirements.	<p>The continued competency section is amended to group all requirements for LBSWs in (A), all requirements for LMSWs in (B), and LCSWs in (C).</p> <p>Additionally, the requirement for continuing education hours for LBSWs in (A) is decreased from 15 contact hours every two years to 10, which the Board felt was more appropriate for the least advanced license type. Additionally, the requirement for continuing education in ethics, standards of practice, or laws governing the practice of social work is decreased for LBSWs from three hours every two years to two hours.</p> <p>The requirement for continuing education hours for LMSWs in (B) remains the same, with 15 contact hours required every two years. The requirement for continuing education in ethics, standards of practice,</p>

		<p>or laws governing the practice of social work is increased from three hours to four every two years.</p> <p>LCSW requirements for continuing education remain the same. 30 contact hours are required each two years, with six of those hours in ethics, standards of practice, or laws governing the practice of social work. The requirement regarding ethics, standards of practice, or laws governing the practice of social work has been moved from (D) to (C).</p> <p>(D) is amended to clarify that the subsection applies to all license types, and to move the requirement for ethics, standards of practice, or laws governing the practice of social work to the appropriate paragraph above.</p> <p>(G)(1) is amended to require fewer continuing education hours in category 1 for LBSWs. Currently, LBSWs must obtain 10 hours of category 1 continuing education every two years. The amendments lower that amount to 7 hours. The amendments clarify that LMSWs are required to obtain 10 hours of category 1 every two years, and LCSWs are required to obtain 20 hours every two years.</p> <p>(G)(1)(d) is amended to add the American Association for Psychoanalysis in Clinical Social Work and its state and local affiliates and the Virginia Association of Sex Offender Treatment Providers to the list of certification entities.</p> <p>(G)(2) is amended to state the maximum category II hours allowed for each license type. The maximum category II hours for LBSWs is separated from the LMSW count due to the decrease in overall continuing education hours required biennially from LBSWs. LBSWs will be permitted to obtain up to three continuing education hours in category II.</p> <p>(G)(2)(a) – (h) are amended to remove parentheses and change the fragmented sentence contained in the parentheses to a full sentence.</p>
20-110	Contains provisions for late renewal, reinstatement, and reactivation.	<p>The term “clinical social worker” is replaced with LCSW.</p> <p>The defined term NPDB replaces the full name for the National Practitioner Data Bank.</p>
20-130	Contains requirements for renewal of registration for associate social workers and registered social workers.	This provision is amended to delete the reference to an old statute that is difficult to find.
20-150	Contains regulations governing professional conduct of licensees.	(B) is amended to replace “clinical social workers” with LCSW.

		<p>(B)(4) is amended to clarify that any known or suspected violations of laws and regulations shall be reported to the Board.</p> <p>(B)(6) is amended to include that billing arrangements clearly state the credentials of the person rendering service, and to state that supervisees working toward licensure may not bill clients directly. These changes are to ensure that patients are aware whether an LCSW, LMSW, or LBSW is rendering service, and to ensure that improper direct billing by supervisees is clearly prohibited.</p> <p>(B)(8) is amended for clarity by moving the requirement for confidentiality to the appropriate location in the sentence.</p> <p>(B)(13) is deleted. This provision is unnecessary due to the existence of Virginia Code § 54.1-2409.5, which specifically includes provisions for disciplinary actions.</p> <p>(B)(17) is added to make it clear in regulation that licensees shall not diagnose third parties.</p> <p>The first provision of (C) and (C)(1) are amended for clarity and readability. No substantive provisions have changed.</p> <p>(C)(3) is amended to replace the plural possessive of "clients" with the singular possessive, "a client's." Additionally, the provision is amended to use the proper term for express consent and increase clarity and readability.</p> <p>(D) is amended to clarify that the subsection refers to professional boundaries, not simply dual relationships. This is consistent with the remainder of (D) other than (D)(1), which specifically addresses dual relationships.</p> <p>(D)(1) is amended to clarify problematic dual relationships which may result in boundary violations and add inappropriate physical contact or assuming the role of a parent in problematic relationships.</p> <p>(D)(2) is amended to remove the word "exploitive" and replace it with "exploitative." There is no change in meaning, but exploitative is the proper word to use grammatically.</p>
20-160	Contains grounds for disciplinary action or denial of issuance of a license or registration.	(5) is amended to require licensees to conduct their practice consistent with the standard of care, rather than the standard of ethics. Standard of care is the common terminology for healthcare regulation. The term "standards of ethics" was in place before the

		2001 change to this regulation, and it is unclear what the reason for the use of the term was.
20-170	Contains requirements for reinstatement following disciplinary action.	This section is amended to move the qualifying phrase to the front of the provision, making it clear that to be eligible for reinstatement, an individual shall follow the requirements of the section.