



**Virginia
Regulatory
Town Hall**

**Periodic Review and
Notice of Intended Regulatory Action
Agency Background Document**

Agency Name:	Board of Social Work
VAC Chapter Number:	18 VAC 140-20-10 et seq.
Regulation Title:	Regulations Governing the Practice of Social Work
Action Title:	Periodic review
Date:	February 28, 2002

This information is required pursuant to the Administrative Process Act § 9-6.14:25, Executive Order Twenty-Five (98), and Executive Order Fifty-Eight (99) which outline procedures for periodic review of regulations of agencies within the executive branch. Each existing regulation is to be reviewed at least once every three years and measured against the specific public health, safety, and welfare goals assigned by agencies during the promulgation process.

This form should be used where the agency is planning to amend or repeal an existing regulation and is required to be submitted to the Registrar of Regulations as a Notice of Intended Regulatory Action (NOIRA) pursuant to the Administrative Process Act § 9-6.14:7.1 (B).

Summary

Please provide a brief summary of the regulation. There is no need to state each provision; instead give a general description of the regulation and alert the reader to its subject matter and intent.

This chapter sets forth the education, experience and examination requirements for licensure of social workers and clinical social workers, establishes fees to cover the administrative costs of the licensing and disciplinary activities, and sets forth standards of conduct which provide the basis for disciplinary action in the event of practitioner misconduct. Regulations also provide requirements for continuing competency to renew an active license and the option of requesting inactive licensure status.

The board proposes to amend its regulations regarding dual relationships and specify a time of two years post termination of the therapeutic relationship with the burden of proof on the clinician.

Basis

Please identify the state and/or federal source of legal authority for the regulation. The discussion of this authority should include a description of its scope and the extent to which the authority is mandatory or discretionary. Where applicable, explain where the regulation exceeds the minimum requirements of the state and/or federal mandate.

The statutory authority for this regulation is found in § 54.1-2400 and Chapter 37 of Title 54.1 of the Code of Virginia.

Section 54.1-2400 establishes the general powers and duties of health regulatory boards including the responsibility to establish qualifications for licensure, to set fees and schedules for renewal, to establish requirements for an inactive license and to promulgate regulations, in accordance with the Administrative Process Act, which are reasonable and necessary to effectively administer the regulatory system.

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

- 1. To establish the qualifications for registration, certification 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.*

The specific mandate for licensure and regulation of social workers is found in Chapter 37 of Title 54.1:

§ 54.1-3700. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Administration" means the process of attaining the objectives of an organization through a system of coordinated and cooperative efforts to make social service programs effective instruments for the amelioration of social conditions and for the solution of social problems.

"Board" means the Board of Social Work.

"Casework" means both direct treatment, with an individual or several individuals, and intervention in the situation on the client's behalf with the objectives of meeting the client's needs, helping the client deal with the problem with which he is confronted, strengthening the client's capacity to function productively, lessening his distress, and enhancing his opportunities and capacities for fulfillment.

"Casework management and supportive services" means assessment of presenting problems and perceived needs, referral services, policy interpretation, data gathering, planning, advocacy, and coordination of services.

"Clinical social worker" means a social worker who, by education and experience, is professionally qualified at the autonomous practice level to provide direct diagnostic, preventive and treatment services where functioning is threatened or affected by social and psychological stress or health impairment.

"Consultation and education" means program consultation in social work to agencies, organizations, or community groups; academic programs and other training such as staff development activities, seminars, and workshops using social work principles and theories of social work education.

"Group work" means helping people, in the realization of their potential for social functioning, through group experiences in which the members are involved with common concerns and in which there is agreement about the group's purpose, function, and structure.

"Planning and community organization" means helping organizations and communities analyze social problems and human needs; planning to assist organizations and communities in organizing for general community development; and improving social conditions through the application of social planning, resource development, advocacy, and social policy formulation.

"Practice of social work" means rendering or offering to render to individuals, families, groups, organizations, governmental units, or the general public service which is guided by special knowledge of social resources, social systems, human capabilities, and the part conscious and unconscious motivation play in determining behavior. Any person regularly employed by a licensed hospital or nursing home who offers or renders such services in connection with his employment in accordance with patient care policies or plans for social services adopted pursuant to applicable regulations when such services do not include group, marital or family therapy, psychosocial treatment or other measures to modify human behavior involving child abuse, newborn intensive care, emotional disorders or similar issues, shall not be deemed to be engaged in the "practice of social work." Subject to the foregoing, the disciplined application of social work values, principles and methods includes, but is not restricted to, casework management and supportive services, casework, group work, planning and community organization, administration, consultation and education, and research.

"Research" means the application of systematic procedures for the purpose of developing, modifying, and expanding knowledge of social work practice which can be communicated and verified.

"Social worker" means a person trained to provide service and action to effect changes in human behavior, emotional responses, and the social conditions by the application of the values, principles, methods, and procedures of the profession of social work.

§ 54.1-3701. Exemption from requirements of licensure.

The requirements for licensure provided for in this chapter shall not be applicable to:

- 1. Persons who render services that are like or similar to those falling within the scope of the classifications or categories in this chapter, so long as the recipients or beneficiaries of such services are not subject to any charge or fee, or any financial requirement, actual or implied, and the person rendering such service is not held out, by himself or otherwise, as a licensed practitioner.*
- 2. The activities or services of a student pursuing a course of study in social work in an institution recognized by the Board for purposes of licensure upon completion of the course of study or under the supervision of a practitioner licensed under this chapter; if such activities or services constitute a part of his course of study and are adequately supervised.*
- 3. The activities of rabbis, priests, ministers or clergymen of any religious denomination or sect when such activities are within the scope of the performance of their regular or specialized ministerial duties, and no separate charge is made or when such activities are performed, whether with or without charge, for or under auspices or sponsorship, individually or in conjunction with others, of an established and legally cognizable church, denomination or sect, and the person rendering service remains accountable to its established authority.*
- 4. Persons employed as salaried employees or volunteers of the federal government, the Commonwealth, a locality, or of any agency established or funded, in whole or part, by any such governmental entity or of a private, nonprofit organization or agency sponsored or funded, in whole or part, by a community-based citizen group or organization. Any person who renders psychological services, as defined in Chapter 36 (§ 54.1-3600 et seq.) of this title, shall be subject to the requirements of that chapter. Any person who, in addition to the above enumerated employment, engages in an independent private practice shall not be exempt from the requirements for licensure.*
- 5. Persons regularly employed by private business firms as personnel managers, deputies or assistants so long as their counseling activities relate only to employees of their employer and in respect to their employment.*

§ 54.1-3702. Administration or prescription of drugs not permitted.

This chapter shall not be construed as permitting the administration or prescribing of drugs or in any way infringing upon the practice of medicine as defined in Chapter 29 (§ 54.1-2900 et seq.) of this title.

§ 54.1-3703. Board of Social Work; members.

The Board of Social Work shall regulate the practice of social work.

The Board shall be composed of seven members, five of whom shall be licensed social workers who have been in active practice of social work for at least five years prior to appointment and two of whom shall be citizen members. The terms of the members of the Board shall be four years.

§ 54.1-3704. Nominations.

Nominations for professional members may be made from a list of at least three names for each vacancy submitted to the Governor by the Virginia Chapter of the National Association of Social Workers and by the Virginia Society for Clinical Social Work. The Governor may notify such organizations of any professional vacancy other than by expiration. In no case shall the Governor be bound to make any appointment from among the nominees.

§ 54.1-3705. Specific powers and duties of the Board.

In addition to the powers granted in § 54.1-2400, the Board shall have the following specific powers and duties:

- 1. To cooperate with and maintain a close liaison with other professional boards and the community to ensure that regulatory systems stay abreast of community and professional needs.*
- 2. To conduct inspections to ensure that licensees conduct their practices in a competent manner and in conformance with the relevant regulations.*
- 3. To designate specialties within the profession.*
- 4. [Expired.]*

§ 54.1-3706. License required.

In order to engage in the practice of social work, it shall be necessary to hold a license.

§ 54.1-3707. Licenses continued.

All licenses heretofore issued by the Board of Social Work and its predecessors shall continue in effect, and be renewable under this chapter.

§ 54.1-3708. Continuing education requirements.

The Board shall establish in regulations requirements for the continuing education of licensed social workers.

The Board may approve persons who provide continuing education or accredit continuing education programs in order to accomplish the purposes of this section.

Public Comment

Please summarize all public comment received as the result of the Notice of Periodic Review published in the Virginia Register and provide the agency response. Where applicable, describe critical issues or particular areas of concern in the regulation. Also please indicate if an informal advisory group was or will be formed for purposes of assisting in the periodic review or development of a proposal.

An announcement of the boards' review of regulations governing the practice of social work was posted on the Virginia Regulatory Townhall, sent to the Registrar of Regulations, and sent to persons on the Public Participation Guidelines mailing list for the board. Public comment was received from May 7, 2001 until July 6, 2001. The following comments were received:

Prevent Child Abuse: *The group urged the board to retain the licensing category of LSW or licensed social workers, as they are critical to maintaining a workforce that can provide quality case management services and can meet the needs of the population served. Licensing is one safeguard to ensure a minimum level of social work competency; its elimination would place a vulnerable population at increased risk of harm.*

Association of Social Work Boards : *ASWB supports the licensure of all social workers to provide the public with greater protection. The Model Law in Social Work includes three categories of licensure with either a bachelor of social work degree or a master of social work. While several states have added additional levels or categories of licensure, none has eliminated multiple category licensure. (44 states have multiple categories of licensure)*

Virginia Society for Clinical Social Work: *The Society strongly supports licensure of social workers as essential for minimal competency and public protection from unethical practitioners. Sanctioning of licensees who provide substandard care is an important role for government, and most members of the Society would support even tougher standards. The Society has no position on the licensure of social workers below the master's level, since its members are divided on the issue with some believing the licensure of clinical and non-clinical social workers is confusing to the public and others of the opinion that all social workers should be held to professional standards and licensed.*

National Association of Social Workers – Virginia Chapter: *The Virginia Chapter of NASW believes that it is critical to retain the category of licensed social worker. NASW-VA opposes the broad exemptions from licensure in the law and objects to the lack of mandate for the Department to investigate and sanction those individuals who are practicing without a license. (Remedies for both, criticisms or concerns would entail legislative action to amend the Code of Virginia.)*

Effectiveness

Please provide a description of the specific and measurable goals of the regulation. Detail the effectiveness of the regulation in achieving such goals and the specific reasons the agency has determined that the regulation is essential to protect the health, safety or welfare of citizens. In addition, please indicate whether the regulation is clearly written and easily understandable by the individuals and entities affected.

The specific goals of the regulations were included with the Notice for Periodic Review and request for comment. The goals are:

1) Complete continuing competency requirements that are reasonable but effective in assuring the public that practitioners are remaining current in professional knowledge and ethical issues.

Chapter 575 of the 1999 Acts of the Assembly provided a specific mandate in § 54.1-3708 for the board to develop continuing education requirements for licensure renewal. In compliance with this mandate, the Board adopted a regulation setting forth an hour requirement, approved categories of activities, approved providers and instructions for documentation of compliance. The Board included a provision for an inactive licensure status to allow practitioners who are not actively practicing social work in Virginia to defer the continuing education requirement until they reactivate the license.

In developing the requirements, the board contemplated the financial and time burdens the requirements might have on licensees, and at the same time strove to develop a meaningful standard that would ensure continued competency to protect the public health, safety and welfare. For alternatives, the Board considered the continuing education requirements of 41 other state social work boards, and the requirements of other boards in the Department of Health Professions. The Board also considered public comment regarding the content of the training. The Board considered a range of hours from 20 to 40 per biennium, and selected 30 hours as a reasonable number of hours compared with the requirements in other states. Two of those hours must pertain to the standards of practice and laws governing the profession of social work or the Code of Ethics of a professional association for social work. The Board also considered the alternatives of formal training versus self-directed or independent study. The Board determined that a combination of the two would provide the most flexible alternative, while ensuring the quality of the bulk of the training.

The final regulation became effective on April 25, 2001, and licensees will have to indicate their compliance with the requirements in conjunction with their licensure renewals in 2003. While it is too early to evaluate the effectiveness of the regulations on continuing competency, the Board is satisfied that the requirements are sufficient to ensure that practitioners are remaining current in professional knowledge and ethical issues.

2) Complete study of whether the non-clinical category of licensure is essential to protect the public.

In the fall of 1998, the Board began to review the statutes and regulations governing the practice of social work. As a part of that review, the Board decided to evaluate the practice of **non-clinical** social work to determine what level of regulation is essential to protect the public by surveying the licensed social workers in Virginia and the agencies or organizations in which they worked. Questions were designed to provide a job analysis by listing approximately 30 tasks and asking whether non-clinical practitioners perform those tasks autonomously. The questionnaire then asked whether the task required specialized education and training in social work and whether there was potential for harm if the provider did not have specialized skills.

Additionally, questions were included to determine whether licensure was required for employment and whether a licensed person supervised the social worker, and if so, what type of license is held.

Results of the survey generally indicated that non-clinical social workers were autonomously performing a range of tasks that did require specialized education and did have some potential for harm if specialized skills were not utilized. In March of 1999, the Board concluded that the survey verified the need for licensure, but that the exemptions to licensure were too broad to make the statute effective. At that time, the Board agreed that the exemption issue should be addressed by the General Assembly, but no such legislation has been introduced.

Although the Board was satisfied that the 1999 survey on the practice of non-clinical social work was sufficiently conclusive, additional comment was requested for the periodic review begun in 2001. (See section on public comment) Again, opinion expressed by social work associations and consumers of social work services was strongly on the side of retaining licensure for non-clinical practitioners. Therefore, no amendments were recommended for the licensure regulations.

Alternatives

Please describe the specific alternatives for achieving the purpose of the existing regulation that have been considered as a part of the periodic review process. This description should include an explanation of why such alternatives were rejected and this regulation reflects the least burdensome alternative available for achieving the purpose of the regulation.

The Board considered abolishing the Licensed Social Worker (LSW) credential in that this level of certification does not allow a person to operate independently. In addition, most LSW's operate non-clinically, in exempt settings, further negating the need for the designation. Abolishing the designation would reduce the burden of regulation associated with the profession. However, ultimately the idea of abolishing the designation was rejected. A survey conducted by the Board clearly verified the need for specialized training to practice non-clinical social work. Further, the LSW designation was clearly viewed within the profession as a desired career stepping stone to LCSW licensure. Many clinical social work trainees opted to obtain the LSW credential even though this license was voluntary for the most part and limited the scope of the LSW to tasks associated with case management.

As alternatives to the Board's current dual relationship prohibition, the Board considered adopting a five-year prohibition on dual relationship as set out in the regulations of the Board of Counseling. However, the five-year prohibition was rejected in favor of a two-year prohibition as set out in the regulations of the Board of Psychology. The two-year prohibition was seen as least burdensome, yet it achieved the purpose for this regulatory amendment, while maintaining the mission of protecting the health, safety, and welfare of the citizens of the Commonwealth.

Recommendation

Please state whether the agency is recommending the regulation be amended or terminated and the reasons such a recommendation is being made.

The Board is recommending that current regulation be amended for consistency purposes. Many practitioners hold multiple licenses under the Boards of Social Work, Psychology, and Counseling. Inconsistencies in the ethical standards among these Boards sometimes result in discrepancies in the level of disciplinary action taken for the same offenses. In the interest of consistency, the Board plans to review its dual relationship standards and adopt language that will allow for more equitable disciplinary action among the three boards.

Substance

Please detail any changes that would be implemented.

18 VAC 140-20-105. Continued competency requirements for renewal of an active license. The reference in subsection B to the National Federation of Societies for Clinical Social Work is outdated and should be changed to the Clinical Social Work Federation.

18 VAC 140-20-150. Professional conduct.

Subsection 9 should be amended to include language that will limit to two (2) years the period of time after cessation or termination of professional services that a social worker may not engage in sexual intimacies with a supervisee, resident, therapy patient, client, or those included in collateral therapeutic services.

Family Impact Statement

Please provide a preliminary analysis of the proposed regulatory action that assesses the potential 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.

In its preliminary analysis of the proposed regulatory action, the agency has determined that there is no potential impact on the institution of the family and family stability and no effect on family income.