



Virginia
Regulatory
Town Hall

Notice of Intended Regulatory Action Agency Background Document

Agency Name:	Board of Social Work, Department of Health Professions
VAC Chapter Number:	18VAC140-20-10 et seq.
Regulation Title:	Regulations Governing the Practice of Social Work
Action Title:	Increase in fees
Date:	April 16, 2010

This information is required prior to the submission to the Registrar of Regulations of a Notice of Intended Regulatory Action (NOIRA) pursuant to the Administrative Process Act § 9-6.14:7.1 (B). Please refer to Executive Order Twenty-Five (98) and Executive Order Fifty-Eight (99) for more information.

Purpose

Please describe the subject matter and intent of the planned regulation. This description should include a brief explanation of the need for and the goals of the new or amended regulation.

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. Therefore, it is 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. Since the fees from licensees no longer generate sufficient funds to pay operating expenses for the board, consideration of a fee increase is essential. In order to begin to reduce the deficits and have sufficient funding for the operation of the board, it is necessary to begin promulgation of amendments to regulations and have regulations in effect prior to the 2013 renewal cycle.

Legal basis

18 VAC 140-20-10 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 **contemplated regulation is mandated by § 54.1-113**; however the board must exercise some discretion in the amount and type of fees that will be increased in order to comply with the statute.

§ 54.1-113. Regulatory boards to adjust fees.--Following the close of any biennium, when the account for any regulatory board within the Department of Professional and Occupational Regulation or the Department of Health Professions maintained under § 54.1-308 or § 54.1-2505 shows expenses allocated to it for the past biennium to be more than ten percent greater or less than moneys collected on behalf of the board, it shall revise the fees levied by it for certification or licensure and renewal thereof so that the fees are sufficient but not excessive to cover expenses.

Need

Please detail the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, delineate any potential issues that may need to be addressed as the regulation is developed.

There is a need to propose regulatory action to increase fees in order to have sufficient funding to license new social workers and clinical social workers, to investigate reports of misconduct and to take disciplinary action against licensees who may represent a risk of harm to their clients. The projected budgets for the Board are based on continuation of a biennial renewal with the major income derived in odd years.

DHP

Projected Board of Social Work Revenue, Expenditures & Cash
FY10 - FY14

Cash Balance as of June 30, 2009	404,324
FY10 Budget Revenue	43,440
Total FY10 Direct and Allocated Budget Expenditures	<u>396,496</u>
Projected Cash Balance as of June 30, 2010	<u><u>51,268</u></u>

Projected Cash Balance as of June 30, 2010	51,268
FY11 Budget Revenue	696,020
Total FY11 Direct and Allocated Budget Expenditures	<u>399,205</u>
Projected Cash Balance as of June 30, 2011	<u><u>348,082</u></u>

Projected Cash Balance as of June 30, 2011	348,082
FY12 Budget Revenue	43,440
Total FY12 Direct and Allocated Budget Expenditures	<u>413,056</u>
Projected Cash Balance as of June 30, 2012	<u><u>(21,534)</u></u>

Projected Cash Balance as of June 30, 2012	(21,534)
FY13 Budget Revenue	696,020
Total FY13 Direct and Allocated Budget Expenditures	<u>419,058</u>
Projected Cash Balance as of June 30, 2013	<u><u>255,428</u></u>

Projected Cash Balance as of June 30, 2013	255,428
FY14 Budget Revenue	43,440
Total FY14 Direct and Allocated Budget Expenditures	<u>423,000</u>
Projected Cash Balance as of June 30, 2014	<u><u>(124,132)</u></u>

While the Board is able to maintain a positive balance at the end of each odd fiscal year, it begins to experience an increasingly large deficit in the even years when it receives a small amount of revenue. To address the unevenness of revenue and to achieve consistency with the other

behavioral health practitioners, the Board intends to consider modifying its renewal cycle from biennial to annual.

Fee increases for licensees regulated by the Board of Social Work are necessary in order for the board and the Department to continue performing essential functions of approving residencies, licensing new social workers and of protecting the public from continued practice by incompetent or unethical practitioners.

Substance

Please detail any changes that will be proposed. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed.

No specific regulatory language has been developed; the agency will develop alternative fee structures that will address the deficit in funding for the board to consider in its adoption of proposed regulations. Expenditures related to various statutory functions of the board, such as investigation of complaints will be examined to determine if there are any alternatives. In addition, the board will apply the Principles for Fee Development adopted by the agency in 1999 to ensure equitable distribution of costs and fees that are proportional to the activities they support.

As stated above, the Board will consider 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.

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also, please describe the process by which the agency has considered or will consider other alternatives for achieving the need in the most cost-effective manner.

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

1. Increase fees through the promulgation of regulations.

As required by law, the board is obligated to establish and collect fees that are necessary to fund operations of the board and the Department. An alternative is to seek the revenue from licensees and applicants to fully fund appropriated expenditures. Costs of services will be paid by

consumers who use the services of providers, but licensure fees represent a miniscule percentage of the over-all costs of health care. The cost of operation of regulatory boards does not significantly affect the cost or access to health care. However, failure to fully fund the licensing and disciplinary services through fees will have a detrimental affect on quality and availability of care.

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

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

- **Investigations and discipline**
- **Examinations leading to license**
- **License renewals**
- **Regulation**
- **Approval of new licenses and residencies**

Delays in licensing and investigation could place a vulnerable population in Virginia at risk as clinical practitioners, who are responsible for the mental health and safety of clients in their care and who should not be practicing, would be able continue to practice. Delays in licensing or approval of residencies could also result in an insufficient number of social workers to provide services in communities. It is believed that these consequences would not be acceptable to the administration, the General Assembly, or to the general public.

To avoid increases in fees, the board and the Department of Health Professions have delayed hiring of new positions and held some positions approved for hiring. Travel restrictions are in effect, and the agency has reduced the use of media services for recruitment.

Renewal Schedule

Persons licensed by the Board of Social Work currently renew their licenses every odd year by June 30th. Therefore, it is essential to have an increased fee in place by 2012 or early 2013 in order to prevent the deficit from growing even larger and necessitating an even greater fee increase.

Public participation

The agency is seeking comments on the intended regulatory action, including but not limited to 1) ideas to assist in the development of a proposal, 2) the costs and benefits of the alternatives stated in this background document or other alternatives and 3) potential impacts of the regulation. The agency is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected

small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit comments may do so via the Regulatory Townhall website , www.townhall.virginia.gov, or by mail, email or fax to Elaine Yeatts, Agency Regulatory Coordinator, 9960 Mayland Drive, Henrico, VA 23233 or elaine.yeatts@dhp.virginia.gov or by fax to (804) 527-4434. Written comments must include the name and address of the commenter. In order to be considered comments must be received by the last day of the public comment period.

A public hearing will be held after the publication of proposed amendments and notice of the hearing may be found on the Virginia Regulatory Town Hall website (www.townhall.virginia.gov) and can be found in the Calendar of Events section of the Virginia Register of Regulations. Both oral and written comments may be submitted at that time.

Participatory approach

The board will be using the participatory approach in the development of the proposal through inclusion of the public in meetings of the Regulatory Committee and the board at which fee proposals will be discussed and licensees and other interested parties will have the opportunity to offer comment.

Family impact

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 amount and nature of the fee increase.