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Proposed Regulation Agency Background Document

Agency name	Board of Social Work, Department of Health Professions
Virginia Administrative Code (VAC) citation(s)	18VAC140-20-10 et seq.
Regulation title(s)	Regulations Governing the Practice of Social Work
Action title	Additional hours of ethics
Date this document prepared	9/21/18

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1 VAC7-10), and the *Virginia Register Form, Style, and Procedure Manual for Publication of Virginia Regulations*.

Brief Summary

Please 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.

The Board intends to amend the requirements for continuing education in section 105 to increase the hours pertaining to ethics or the standards of practice for behavioral health professions from a minimum of two to six hours every two years for licensed clinical social workers and a minimum of three hours every two years for licensed social workers.

Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.

LCSW = licensed clinical social worker

LSW = licensed social worker

Mandate and Impetus

Please 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, board decision, etc.). For purposes of executive branch review, "mandate" has the same meaning as defined in Executive Order 14 (as amended, July 16, 2018), "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the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."

The impetus for this action was concern that some social workers were not fully aware of ethical considerations in conducting their practice as evidenced in complaints received and cases adjudicated.

Legal Basis

Please identify (1) the agency or other promulgating entity, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia or Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency or promulgating entity's overall regulatory authority.

Regulations are promulgated under the general authority of Chapter 24 of Title 54.1 of the Code of Virginia. Section 54.1-2400, which provides the Board of Social Work the authority to promulgate regulations to 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:

...6. To 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 Board has a specific mandate to promulgate regulations requiring continuing education:

§ 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.

Purpose

Please 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's intended to solve.

The purpose of adding hours in ethics or standards of practice is to address a concern about complaints against social workers, almost all of which stem from an ethical issue or a failure to adhere to professional standards of practice. While the rate of complaints against clinical social workers is similar to or lower than other behavioral health professions (13.52 per 1,000 licensees for LCSWs; 15.75 per 1,000 for licensed professional counselors; 16.45 per 1,000 for licensed clinical psychologists in the 2014-2016 biennium), the nature of the complaints indicates a lack of understanding of ethics or standards of practice. Therefore, the Board believes a higher percentage of the total hours of continuing education should be devoted to those topics in order to protect the health, welfare and safety of clients receiving social work services.

Substance

Please 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.

Currently, section 105 specifies that 30 hours of continuing education are required for renewal of a licensed clinical social work license and 15 hours for a licensed social worker every two years. A minimum of two of those hours must pertain to ethics or the standards of practice for the behavioral health professions or to laws governing the practice of social work in Virginia. The proposed amendment would increase the ethics/standards requirement from two to six hours for LCSWs and three hours for LSWs; there would be no change in the total hours required.

Issues

Please 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) The primary advantage to the public is some assurance that social workers are more knowledgeable about the ethics and standards of practice affecting their profession. There are no disadvantages to the public.
- 2) There are no advantages and disadvantages to the agency or the Commonwealth; and
- 3) There are no other pertinent matters of interest to the regulated community, government officials, and the public. The Director of the Department of Health Professions has reviewed the proposal and performed a competitive impact analysis. The Board is authorized under § 54.1-2400 to “promulgate regulations in accordance with the Administrative Process Act which are reasonable and necessary to administer effectively the regulatory system.” Any restraint on competition that results from this regulation is in accord with the General Assembly’s policy as articulated in § 54.1-100 and is necessary for the preservation of the health, safety, and welfare of the public and will further the public’s need for assurances of quality care.

Requirements More Restrictive than Federal

Please 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 is no applicable federal requirement.

Agencies, Localities, and Other Entities Particularly Affected

Please identify any other state agencies, localities, or other entities particularly affected by the regulatory change. "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

Pursuant to § 2.2-4007.04 of the Code of Virginia, please 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. Please keep in mind that this is 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:</p> <ul style="list-style-type: none"> 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>There are no costs or savings to the agency resulting from this change. The total number of CE hours is not changed, nor is the process for auditing a random number of licensees at the end of a renewal period.</p> <p>As a special fund agency, the Board must generate sufficient revenue to cover its expenditures from non-general funds, specifically the renewal and application fees it charges to practitioners or entities for necessary functions of regulation. All notifications will be done electronically.</p> <p>There are no on-going expenditures.</p>
<p><i>For other state agencies:</i> projected costs, savings, fees or revenues resulting from the</p>	<p>None</p>

regulatory change, including a delineation of one-time versus on-going expenditures.	
<i>For all agencies:</i> Benefits the regulatory change is designed to produce.	Better understanding of the ethics in the profession of social work

Impact on Localities

Projected costs, savings, fees or revenues resulting from the regulatory change.	None
Benefits the regulatory change is designed to produce.	None

Impact on Other Entities

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.	Licensed clinical social workers and licensed social workers
Agency's best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that: a) is independently owned and operated and; b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	There are 6,985 licensed clinical social workers and 795 licensed social workers. Licensed social workers are employed in institutions/facilities and are not practicing independently. It is unknown how many licensed clinical social workers have a small business. The Healthcare Workforce Data Center at DHP reports that in 2017: <i>Two-thirds of all LCSWs work in the private sector, including 47% who work at a for-profit institution. Approximately 30% of all LCSWs work in either a solo or group private practice at their primary work location, while another 14% work at an outpatient mental health facility.</i>
All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Please be specific and include all costs including, but not limited to: a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change; c) fees; d) purchases of equipment or services; and e) time required to comply with the requirements.	There would be no change in costs because the total number of required CE hours is not changed. Social workers will need to select courses that pertain to "ethics or the standards of practice for behavioral health professions or to laws governing the practice of social work in Virginia." For example, licensees can access on-line courses through the Association of Social Work Boards (ASWB), which has ACE, its Approved Continuing Education program. A one-hour course in ethical considerations costs \$6.97; another two-hour course was \$13.94 for the post-course exam.
Benefits the regulatory change is designed to produce.	The benefit is designed to produce social workers who are more knowledgeable about the standards of practice and laws affecting the profession.

Alternatives

Please 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.

There are no alternatives that meet the essential purpose of the change, which is to ensure that social workers are more familiar with the standards, laws, and ethics in practicing their profession.

Regulatory Flexibility Analysis

Pursuant to § 2.2-4007.1B of the Code of Virginia, please 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.

There are no alternative regulatory methods for requiring more CE hours in ethics other than promulgating a regulatory action.

Public Comment

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

The NOIRA stage was published on 8/6/16, posted on Townhall, and sent to interested parties with comment requested until 9/5/18. There was no comment.

Public Participation

Please include a statement that in addition to any other comments on the regulatory change, the agency is seeking comments on the costs and benefits of the regulatory change and the impacts of the regulated community. Also, indicate whether a public hearing will be held to receive comments.

In addition to any other comments, the Board of Social Work is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the agency/board is 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 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://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 Elaine Yeatts, 9960 Mayland Drive, Henrico, VA 23233; Elaine.yeatts@dhp.virginia.gov; (804) 367-4688 phone; (804) 527-4434 fax. 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 this stage, and notice of the hearing will be posted on the Virginia Regulatory Town Hall website (<https://townhall.virginia.gov>) and on the Commonwealth Calendar website (<https://commonwealthcalendar.virginia.gov/>). Both oral and written comments may be submitted at that time.

Detail of Changes

Please 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 changes to existing regulation(s), please use the following chart:

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
105	N/A	Sets out all the requirements for continued competency for renewal of an active license.	<p>Licensed clinical social workers are required to have completed a minimum of 30 contact hours of continuing education and licensed social workers are required to have completed a minimum of 15 contact hours of continuing education prior to licensure renewal in <i>even years</i>.</p> <p>Currently, a minimum of two of those hours must pertain to ethics or the standards of practice for the behavioral health professions or to laws governing the practice of social work in Virginia.</p> <p>The change proposed is that six of those hours relate to ethics, standards of practice or laws for LCSWs and three of those hours for LSWs.</p> <p>In the NOIRA, the Board had intended to change the required hours of ethics from two to six. However, in discussion of proposed regulations, it was noted that six hours represents 20% of the total hours for a LCSW (30 are required), but it represents 40% of the hours for a LSW</p>

			<p>(15 are required). Therefore, the Board voted to amend the regulation so the hours of ethics are proportional to the total hours for both types of licensee.</p> <p>Members of the Board report that there are a broad range of courses available that a licensee may choose that will fulfill the six or three-hour requirement. Subsection B of section 105 lists all the type of courses and providers that are approved for continuing education; any of those may offer CE that would provide those hours.</p>
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