



Virginia Department of Planning and Budget **Economic Impact Analysis**

18 VAC 140-20 Regulations Governing the Practice of Social Work
Department of Health Professions
Town Hall Action/Stage: 5631 / 9353
October 13, 2021

Summary of the Proposed Amendments to Regulation

The Board of Social Work (Board) proposes discretionary changes to: 1) eliminate a specified requirement for licensure by endorsement, 2) eliminate a specified requirement for reinstatement or reactivation of licensure for a person whose license has been lapsed or inactive for 10 or more years, and 3) specify that persons licensed by the Board who are in dual relationships with a client shall not engage in physical contact with a client when there is a likelihood of psychological harm to the client nor shall they sexually harass a client.

Background

Licensure Levels

Pursuant to Code of Virginia § 54.1-3700,¹ a licensed clinical social worker (LCSW) is a licensed 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. A licensed master's social worker (LMSW) is a licensed social worker who engages in the practice of social work and provides non-clinical, generalist services, including staff supervision and management. A licensed baccalaureate social worker (LBSW) is a licensed social worker who engages in the practice of social work under the supervision of a master's social worker and provides basic generalist services, including casework management and supportive services and consultation and education.

¹ See <https://law.lis.virginia.gov/vacode/54.1-3700/>

Licensure by Endorsement

Under the current regulation, Section 18 VAC 140-20-45 states that every applicant for licensure by endorsement shall submit:

1. A completed application and the application fee prescribed in 18 VAC 140-20-30.
2. Documentation of active social work licensure in good standing obtained by standards required for licensure in another jurisdiction as verified by the out-of-state licensing agency. Licensure in the other jurisdiction shall be of a comparable type as the licensure that the applicant is seeking in Virginia.
3. Verification of a passing score on a Board-approved national exam at the level for which the applicant is seeking licensure in Virginia.
4. Documentation of any other health or mental health licensure or certification, if applicable.
5. A current report from the U.S. Department of Health and Human Services National Practitioner Data Bank (NPDB).
6. Verification of:
 - a. Active practice at the level for which the applicant is seeking licensure in another United States jurisdiction for 24 out of the past 60 months;
 - b. Active practice in an exempt setting at the level for which the applicant is seeking licensure for 24 out of the past 60 months; or
 - c. Evidence of supervised experience requirements substantially equivalent to those outlined in 18 VAC 140-20-50 A 2 and A 3.
7. Certification that the applicant is not the respondent in any pending or unresolved Board action in another jurisdiction or in a malpractice claim.

As part of this regulatory change, the Board now proposes to eliminate the sixth required submission (i.e., verification).

Reinstatement and Reactivation

Under the current regulation, Section 18 VAC 140-20-110 indicates that (a) individuals applying for license reinstatement whose license has been lapsed for 10 or more years and (b) individuals applying for license reactivation who have been inactive for 10 or more years shall, among other requirements, provide evidence of competency to practice by documenting:

1. Active practice in another United States jurisdiction for at least 24 out of the past 60 months immediately preceding application;
2. Active practice in an exempt setting for at least 24 out of the past 60 months immediately preceding application; or
3. Practice as a supervisee under supervision for at least 360 hours in the 12 months immediately preceding reinstatement of licensure in Virginia. The supervised practice shall include a minimum of 60 hours of face-to-face direct client contact and nine hours of face-to-face supervision.

The Board now proposes to wholly eliminate this requirement to provide evidence of competency to practice. Other requirements do remain.²

Professional Conduct

Section 18 VAC 140-20-150 subsection D specifies requirements for licensees in regard to dual relationships. According to the National Association of Social Workers Code of Ethics, from which this language was taken, “Dual or multiple relationships occur when social workers relate to clients in more than one relationship, whether professional, social, or business. Dual or multiple relationships can occur simultaneously or consecutively.”³ The Board proposes to add that licensees who are in a dual relationship with a client shall:

6. Not engage in physical contact with a client when there is a likelihood of psychological harm to the client. Social workers who engage in physical contact are responsible for setting clear and culturally sensitive boundaries.
7. Not sexually harass clients. Sexual harassment includes sexual advances; sexual solicitation; requests for sexual favors; and other verbal written, electronic, or physical contact of a sexual nature.

Based upon its placement in the dual relationship section of the regulation (18 VAC 140-20-150, subsection D), and not elsewhere in the regulation, it appears that this proposed additional language would only apply to social workers who are in dual relationships, and not to other types of client interactions or relationships.

² See discussion in the Estimated Benefits and Costs section, Reinstatement and Reactivation subsection.

³ See Section 1.06 Conflicts of Interest, under Ethical Standards at <https://www.socialworkers.org/About/Ethics/Code-of-Ethics/Code-of-Ethics-English>

Estimated Benefits and Costs

Licensure by Endorsement

In 2020, the Board issued 377 LCSW, 81 LMSW, and 6 LBSW licenses by endorsement.⁴ So far in 2021, the Board has issued 456 LCSW, 91 LMSW, and 12 LBSW licenses by endorsement.⁵ The proposal to eliminate the requirement of verification of active practice or supervised experience for licensure by endorsement applicants would likely increase these numbers somewhat going forward by increasing the number of individuals who qualify for licensure by endorsement. This would be beneficial for such applicants, as well as employers in the Commonwealth looking to hire fully-licensed social workers.

Licensure by endorsement would still require: a) documentation of active social work licensure⁶ in good standing in another jurisdiction as verified by the out-of-state licensing agency, b) verification of a passing score on a Board-approved national exam at the level for which the applicant is seeking licensure in Virginia, c) a current report from the NPDB, and d) certification that the applicant is not the respondent in any pending or unresolved Board action in another jurisdiction or in a malpractice claim. The Board believes that these remaining requirements are sufficient evidence of competency and good practice for candidates to be licensed by endorsement from another U.S. jurisdiction.⁷

Reinstatement and Reactivation

In 2020, the Board reinstated 29 LCSW, 3 LMSW, and 0 LBSW licenses.⁸ So far in in 2021, the Board has reinstated 31 LCSW, 7 LMSW, and 0 LBSW licenses.⁹ Data on reactivated licenses is not available. The proposal to eliminate the requirement of documentation of active practice or supervised experience for reinstatement or reactivation applicants whose license has been lapsed or inactive for 10 or more years would likely increase these numbers somewhat going forward by increasing the number of individuals who qualify for reinstatement or

⁴ Source: Department of Health Professions

⁵ Ibid

⁶ “Active social work licensure” means that the license is active, but does not necessarily mean that the license holder has been practicing actively.

⁷ Source: Department of Health Professions

⁸ Ibid

⁹ Ibid

reactivation. This would be beneficial for such applicants, as well as employers in the Commonwealth looking to hire fully-licensed social workers.

Such a social worker reactivating would still be required to provide documentation of continued competency hours equal to the number of years the license has been inactive, not to exceed four years. Such a social worker reinstating would still be required to provide: a) documentation of having completed all applicable continued competency hours equal to the number of years the license has lapsed, not to exceed four years, b) documentation of any other health or mental health licensure or certification held in another United States jurisdiction, if applicable, and c) a current report from the NPDB. Additionally, the regulation does not require active practice to renew a full current license. Thus, the Board believes the remaining requirements are sufficient evidence of competency for an applicant to have their license reinstated or reactivated.

Professional Conduct

According to the Department of Health Professions, the proposed language specifying that persons licensed by the Board who are engaged in dual relationships with clients shall not engage in physical contact with a client when there is a likelihood of psychological harm to the client and shall not sexually harass a client, are added to address situations that have been reported to the Board in complaints filed by clients. In making a determination of probable cause to move forward with a disciplinary proceeding, Board members did not believe there were clear standards on which a case could be made. The proposed additions would address conduct that the Board believes is unprofessional and harmful to clients. To the extent that the proposed additional language helps enable the Board to properly discipline inappropriate behavior by licensees, it would be beneficial.

Businesses and Other Entities Affected

The proposed amendments potentially affect the 8,006 LCSWs, 966 LMSWs, and 31 LBSWs licensed in the Commonwealth, as well as entities that employ social workers. According to survey data from a July 2020 report (the most recent available) from the Virginia

Healthcare Workforce Data Center,¹⁰ the primary employers of LCSWs in the Commonwealth are distributed as follows:

Establishment Type	Percentage
Private Practice, Solo	16%
Private Practice, Group	13%
Mental Health Facility, Outpatient	13%
Community Services Board	10%
School (Providing Care to Clients)	7%
Hospital, General	7%
Community-Based Clinic or Health Center	7%
Hospital, Psychiatric	3%
Residential Mental Health/Substance Abuse Facility	2%
Administrative or Regulatory	2%
Academic Institution (Teaching Health Professions Students)	2%
Other Practice Setting	17%

Categorized by sector, the report presents the types of employers of LCSWs in Virginia as follows:

Sector	Percentage
For-Profit	48%
Non-Profit	21%
State/Local Government	22%
Veterans Administration	4%
U.S. Military	3%
Other Federal Government	1%

Similar data are not available for LBSWs and LMSWs.

The proposed amendments do not appear to adversely affect employers of social workers.

¹⁰ See <https://www.dhp.virginia.gov/media/dhpweb/docs/hwdc/behsci/0904LCSW2020.pdf>

Small Businesses¹¹ Affected:

The proposed amendments do not appear to adversely affect small businesses. The Board has not provided any information regarding the specific number of employers that are independent practitioners (small businesses).

Localities¹² Affected¹³

Local governments that are having difficulty finding enough qualified social workers to employ may be particularly affected by the proposed elimination of specified requirements for licensure by endorsement and reinstatement or reactivation of licensure for a person whose license has been lapsed or inactive for 10 or more years. The proposed amendments do not appear to introduce costs for local governments. The Board has not provided any information regarding how many employers are local government agencies or entities.

Projected Impact on Employment

The proposed elimination of specified requirements for licensure by endorsement and reinstatement or reactivation of licensure for a person whose license has been lapsed or inactive for 10 or more years may moderately increase the number of individuals who become licensed social workers in the Commonwealth. More licensed social workers would likely result in more individuals employed as social workers in Virginia.

Effects on the Use and Value of Private Property

The proposed elimination of specified requirements for licensure by endorsement and reinstatement or reactivation of licensure for a person whose license has been lapsed or inactive for 10 or more years may moderately increase the supply of licensed social workers. This may moderately reduce the cost to firms of hiring social workers, which may in turn have a small positive impact on their value.

The proposed amendments do not affect real estate development costs.

¹¹ Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as “a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.”

¹² “Locality” can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

¹³ § 2.2-4007.04 defines “particularly affected” as bearing disproportionate material impact.

Legal Mandates

General: The Department of Planning and Budget has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia (Code) and Executive Order 14 (as amended, July 16, 2018). Code § 2.2-4007.04 requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the report should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

Adverse impacts: Pursuant to Code § 2.2-4007.04(D): In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance within the 45-day period.

If the proposed regulatory action may have an adverse effect on small businesses, Code § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to Code § 2.2-4007.1, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.