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Fast-Track Regulation Agency Background Document

Agency name	Board of Social Work, Department of Health Professions
Virginia Administrative Code (VAC) Chapter citation(s)	18VAC140-20
VAC Chapter title(s)	Regulations Governing the Practice of Social Work
Action title	Acceptance of state exam
Date this document prepared	3/7/22

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 (1VAC7-10), 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.

The Board is proposing an amendment to section 45 (licensure by endorsement) that would allow acceptance of evidence that the national examination, which is currently required for licensure in Virginia, was not required in the applicant's state to be initially licensed at the same level as the license being sought in Virginia (i.e, licensed clinical social worker). The amendment would allow persons who passed a state exam or were "grandfathered" with no exam in a state that did not require passage of a national examination to be licensed in Virginia.

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.

N/A

Statement of Final Agency Action

Provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.

The Board voted to amend 18VAC140-20-45 of the Regulations Governing the Practice of Social Work on March 4, 2021.

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 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."

As required by Virginia Code § 2.2-4012.1, also explain why this rulemaking is expected to be noncontroversial and therefore appropriate for the fast-track process.

There is no mandate for this regulatory change; the impetus comes from a recommendation of the Regulation Committee to create a pathway for some applicants who want to be licensed in Virginia but who do not want to take the national examination to qualify. The impetus also comes from a petition for rulemaking which requested the Board allow endorsement applicants from states which do not or have not always required the national examination for licensure.

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.

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:

1. To establish the qualifications for registration, certification, licensure or the issuance of a multistate licensure privilege in accordance with the applicable law which are necessary to ensure competence and integrity to engage in the regulated professions. ...

6. To 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, which shall include provisions for the satisfaction of board-required continuing education for individuals registered, certified, licensed, or issued a multistate licensure privilege by a health regulatory board through delivery of health care services, without compensation, to low-income individuals receiving health services through a local health department or a free clinic organized in whole or primarily for the delivery of those health services. 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.).

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's intended to solve.

The regulatory change is intended to encourage some qualified clinical social workers who have been practicing in other jurisdictions to apply for licensure. The purpose of this regulatory change is to increase access to care and to protect the public health and safety in the clinical practice of social work by ensuring that clinical social workers who are licensed and have been safely practicing in other states are able to qualify for licensure in Virginia.

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 Board is proposing an amendment to section 45 (licensure by endorsement) that would allow acceptance of evidence that the national examination, which is currently required for licensure in Virginia, was not required in the applicant's state to be initially licensed at the same level as the license being sought in Virginia (i.e, licensed clinical social worker). The amendment would allow persons who passed a state exam or were "grandfathered" with no exam in a state that did not require passage of a national examination to be licensed in Virginia.

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) The advantages to the public include less restrictive licensure by endorsement requirements for experienced social workers, leading to more available social workers to serve the citizens of the Commonwealth.
- 2) There are no 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. The Board is authorized under § 54.1-2400 to “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.” There is no restraint on competition as a result of promulgating this regulation.

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 is no applicable federal requirement.

Agencies, Localities, and Other Entities Particularly Affected

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, 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 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>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. There are no on-going expenditures associated with this change. Any individual applying for and obtaining licensure by endorsement would pay an application fee and regular renewal fees, covering any increase in cost related to additional licensees regulated by the Board.</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>No impact.</p>
<p><i>For all agencies:</i> Benefits the regulatory change is designed to produce.</p>	<p>No impact.</p>

Impact on Localities

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

Impact on Other Entities

<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>Persons affected would be licensees in other jurisdictions who wish to obtain licensure by endorsement in Virginia but did not have to take a national examination for licensure in their current jurisdiction.</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: 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.</p>	<p>The Board has no data on potential applicants in other jurisdictions that may wish to obtain licensure by endorsement but did not take a national exam for licensure in their current jurisdiction. The Board also has no data on the number of small businesses that may employ these individuals or that these individuals may own.</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: a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses;</p>	<p>There would be no cost to potential applicants except the standard fee for the specific license sought as listed in 18VAC140-20-30.</p>

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.	
Benefits the regulatory change is designed to produce.	The change is designed to allow the Board to license more applicants from other jurisdictions, thereby increasing the workforce of licensed social workers available to provide services in the Commonwealth.

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.

In order to make licensure by endorsement less burdensome for some applicants, the Board must adopt amendments to regulation; there is no alternative to a regulatory action.

Regulatory Flexibility Analysis

Pursuant to § 2.2-4007.1B 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.

There is no alternative to amendment of licensure by endorsement regulations under the Board of Social Work.

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.

As required by § 2.2-4011 of the Code of Virginia, if an objection to the use of the fast-track process is received within the 30-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall: 1) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register and 2) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

If you are objecting to the use of the fast-track process as the means of promulgating this regulation, please clearly indicate your objection in your comment. Please also indicate the nature of, and reason for, your objection to using this process.

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, and (iii) the potential impacts 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>. Comments may also be submitted by mail or email to Erin Barrett at erin.barrett@dhp.virginia.gov or at 9960 Mayland Drive, Henrico, VA 23233 or by fax at (804) 527-4434. 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

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 existing VAC Chapter(s) and the proposed regulation. If 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	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
18VAC140-20-45		To obtain licensure by endorsement, requires verification of a passing score on a board-approved national exam at the level for which the applicant is seeking licensure in Virginia.	<p>Proposed amendment states that the Board may accept evidence that a national examination was not required for licensure by the other jurisdiction at the time the applicant was initially licensed.</p> <p>This will permit the Board to accept licensure by endorsement applicants whose original jurisdiction required a state examination, rather than a national examination, at the time the</p>

			<p>applicant was initially licensed and to also accept persons who were grandfathered at the time of initial licensure.</p> <p>It was common for states to offer temporary exceptions to exam requirements when social work laws were first enacted. Similarly, temporary exceptions are often granted when a new category of licensure is added to the regulatory framework. This happened as recently as 2021 in Nevada when that state adopted a masters license. In an effort to reduce barriers to licensure (and employment), there has been a trend for states to accept applicants' credentials for endorsement if they are consistent with the laws in place in their original jurisdiction at the time the applicant obtained a license.</p> <p>It is likely that this change will only benefit a few applicants who were licensed a number of years ago by a state exam or by grandfathering. Since those persons held and currently hold unrestricted licenses in other states, the Board is satisfied that years of practice are adequate evidence of competency</p>
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