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Fast-Track Regulation Agency Background Document

Agency name	State Board of Social Services
Virginia Administrative Code (VAC) Chapter citation(s)	22VAC40-160
VAC Chapter title(s)	Fee Requirements for Processing Applications
Action title	Amend section to clarify how fees shall be paid
Date this document prepared	February 16, 2022

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.

Fee Requirements for Processing Applications, 22VAC40-160, provide regulations for the Department of Social Services (DSS) to charge fees for processing applications for licenses. The proposed amendment in this action clarifies how fees shall be paid for processing applications. This action will allow licensed programs to pay fees by submitting a check or using an online payment system as determined by the Department.

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.

DSS – Department of Social Services
VAC – Virginia Administrative Code

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 State Board of Social Services approved the fast track action to amend 22VAC40-160: Fee Requirements for Processing Applications on February 16, 2022:

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.

Pursuant to Executive Order 14, there are no mandates for this regulatory change or any other impetus. However, the Department is developing an online system that will allow the fees for processing applications to be submitted electronically. This amendment is needed to allow online payments.

This rulemaking action is expected to be noncontroversial and therefore appropriate for the fast-track process because there will be no additional regulatory requirements. This action is intended to expand the method of payments to make it more convenient for licensed providers and Department staff.

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.

The State Board of Social Services has the legal authority to adopt regulations and requirements for licensing fees in accordance with §§ 63.2-217 and 63.2-1734. The Code mandates promulgation of regulations for the activities, services and facilities to be employed by persons and agencies required to be licensed which shall be designed to ensure that such activities, services and facilities are conducive to the welfare of adults and children. This regulatory action will provide direction regarding the provision of these services.

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.

This regulatory change is needed to allow licensed programs the option to pay fees for processing applications for licenses using an online payment system. This action is necessary to allow online payments to be processed in a convenient manner.

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.

This amendment will allow application fees for licenses to be submitted manually by check or using an online payment system.

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.

This regulatory change poses no disadvantages to the public, the agency, the Commonwealth or other pertinent matters of interest to the regulated community or government officials. The primary advantage of this action is to expand the method of payment options to allow online payments for licensure fees.

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 are no requirements in this regulatory action that exceed applicable federal requirements.

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.

There are no known agencies, localities or other entities that would be particularly affected by this regulatory change.

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:</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>VDSS will have minimal ongoing costs by adding an option for an online payment for licensure fees. Costs are \$10.00/month for each Merchant Identification used. VDSS currently has 10 merchant ID's. If the provider pays by e-check there is an 18 cent fee per transaction that VDSS absorbs. It is unknown how many providers would use the online option. VDSS can absorb this minimal cost.</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>There are no other known costs to other state agencies due to this change.</p>
<p><i>For all agencies:</i> Benefits the regulatory change is designed to produce.</p>	<p>This change will improve efficiency in processing payments by offering an online option to pay fees.</p>

Impact on Localities

<p>Projected costs, savings, fees or revenues resulting from the regulatory change.</p>	<p>If a locality operates a licensed program and chooses to pay using the online option a minimal fee may be assessed as a result of this regulatory change.</p>
<p>Benefits the regulatory change is designed to produce.</p>	<p>This change will create a convenient and secure payment option for licensure fees.</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>Licensed children welfare and adult programs will be affected by this regulatory change.</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:</p> <ul style="list-style-type: none"> 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>There are approximately 816 licensed programs that are considered to be small businesses that will be affected by this regulatory change, should they elect to use the online payment system.</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:</p> <ul style="list-style-type: none"> a) projected reporting, 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. 	<p>If a provider chooses to pay a licensing fee through the DSS online process, there is an additional 2.3% fee charged to the provider by a third-party payment processor.</p> <p>Reporting and recordkeeping will not be impacted by this change, and no additional equipment is needed. Paying fees online will not be required; this will be an option for licensed programs.</p>
<p>Benefits the regulatory change is designed to produce.</p>	<p>This change creates a convenient and secure payment option for licensure fees.</p>

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.

There are no viable alternatives to regulatory action as this change adds clarification to how fees shall be paid. The least burdensome method is to amend the regulation. No other less intrusive or costly alternatives for small businesses are available to achieve the purpose of this regulation.

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 are no alternative regulatory methods that will accomplish the objectives of this regulatory action as this change adds clarification to how fees shall be paid. The least burdensome method is to amend the regulation. No other less intrusive or costly alternatives for small businesses are available to achieve the purpose of this regulation.

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 Department of Social Services is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal and any alternative approaches, (ii) the potential impacts of the regulation, and (iii) the agency's regulatory flexibility analysis stated in this background document.

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 email or fax to Sherri Williams, Sherri.Williams@dss.virginia.gov or 804-726-7132. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

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
10		Describes how the Department is authorized to charge fees for processing applications for licenses.	<p>Removed the language 'personal check, money order, or certified' because DSS no longer distinguishes between personal and certified checks, and money orders will no longer be accepted for payment.</p> <p>Added language to allow fees to be paid 'through the online process determined by the Department' because DSS is developing a system that will allow the fees for processing applications to be submitted electronically.</p>

			Amendment in this section is needed to allow online payments.
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If a new VAC Chapter(s) is being promulgated and is not replacing an existing Chapter(s), use Table 2.