



Virginia  
Regulatory  
Town Hall

## Final Regulation Agency Background Document

<b>Agency Name:</b>	Department of Health Professions – Board of Licensed Professional Counselors, Marriage and Family Therapists and Substance Abuse Professionals
<b>VAC Chapter Number:</b>	18 VAC 115-40-10 et seq.
<b>Regulation Title:</b>	Regulations Governing the Certification of Rehabilitation Providers
<b>Action Title:</b>	Increase Fees
<b>Date:</b>	

Please refer to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99) , and the *Virginia Register Form, Style and Procedure Manual* for more information and other materials required to be submitted in the final regulatory action package.

### Summary

*Please provide a brief summary of the new regulation, amendments to an existing regulation, or the regulation being repealed. There is no need to state each provision or amendment; instead give a summary of the regulatory action. If applicable, generally describe the existing regulation. Do not restate the regulation or the purpose and intent of the regulation in the summary. Rather, alert the reader to all substantive matters or changes contained in the proposed new regulation, amendments to an existing regulation, or the regulation being repealed. Please briefly and generally summarize any substantive changes made since the proposed action was published.*

The Board has adopted a new fee structure to comply with a statutory requirement that fees be sufficient to cover board expenditures. The fee structure has been determined in accordance with new *Principles for Fee Development* which are being used to develop fee structures for all boards in the Department of Health Professions. Overall, this will result in an increase in fees for services provided by the Board. For example, the renewal fee will increase from \$50 per year to \$55 per year. The application fee is being reduced from \$100 to \$90 and includes an initial licensure fee for the average initial licensure period for new licensees. A new flat fee of \$100 for reinstatement of a certificate lapsed more than one year replaces the current requirement to reapply under the current regulations. The regulation also includes a fee of \$500 for

reinstatement of a certificate following disciplinary action which resulted in revocation or suspension of a certificate.

### Changes Made Since the Proposed Stage

*Please detail any changes, other than strictly editorial changes, made to the text of the proposed regulation since its publication. Please provide citations of the sections of the proposed regulation that have been altered since the proposed stage and a statement of the purpose of each change.*

No changes have been made since the publication of the proposed regulation.

### Statement of Final Agency Action

*Please provide a statement of the final action taken by the agency: including the date the action was taken, the name of the agency taking the action, and the title of the regulation.*

On February 18, 2000, the Board of Licensed Professional Counselors, Marriage and Family Therapists and Substance Abuse Professionals adopted final regulations 18 VAC 115-40-10 et seq., Regulations Governing the Certification of Rehabilitation Providers, completing fee changes in compliance with a statutory mandate that the Board collect sufficient fees to cover the cost of administration of the regulatory program.

### Basis

*Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority, shall be provided. If the final text differs from that of the proposed, please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the final regulation and that it comports with applicable state and/or federal law*

Chapter 24 of Title 54.1 establishes the general powers and duties of health regulatory boards including the responsibility to promulgate regulations and levy fees:

*§ 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 or licensure in accordance with the applicable law which are necessary to ensure competence and integrity to engage in the regulated professions.*

2. *To examine or cause to be examined applicants for certification or licensure. Unless otherwise required by law, examinations shall be administered in writing or shall be a demonstration of manual skills.*
3. *To register, certify or license qualified applicants as practitioners of the particular profession or professions regulated by such board.*
4. *To establish schedules for renewals of registration, certification and licensure.*
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 and Chapter 25 of this title.*
7. *To revoke, suspend, restrict, or refuse to issue or renew a registration, certificate or license which such board has authority to issue for causes enumerated in applicable law and regulations.*
8. *To appoint designees from their membership or immediate staff to coordinate with the Intervention Program Committee and to implement, as is necessary, the provisions of Chapter 25.1 (§ 54.1-2515 et seq.) of this title. Each health regulatory board shall appoint one such designee.*
9. *To take appropriate disciplinary action for violations of applicable law and regulations.*
10. *To appoint a special conference committee, composed of not less than two members of a health regulatory board, to act in accordance with § 9-6.14:11 upon receipt of information that a practitioner of the appropriate board may be subject to disciplinary action. The special conference committee may (i) exonerate the practitioner; (ii) reinstate the practitioner; (iii) place the practitioner on probation with such terms as it may deem appropriate; (iv) reprimand the practitioner; (v) modify a previous order; and (vi) impose a monetary penalty pursuant to § 54.1-2401. The order of the special conference committee shall become final thirty days after service of the order unless a written request to the board for a hearing is received within such time. If service of the decision to a party is accomplished by mail, three days shall be added to the thirty-day period. Upon receiving a timely written request for a hearing, the board or a panel of the board shall then proceed with a hearing as provided in § 9-6.14:12, and the action of the committee shall be vacated. This subdivision shall not be construed to affect the authority or procedures of the Boards of Medicine and Nursing pursuant to §§ 54.1-2919 and 54.1-3010.*
11. *To convene, at their discretion, a panel consisting of at least five board members or, if a quorum of the board is less than five members, consisting of a quorum of the members to conduct formal proceedings pursuant to § 9-6.14:12, decide the case, and issue a final agency case decision. Any decision rendered by majority vote of such panel shall have the*

*same effect as if made by the full board and shall be subject to court review in accordance with the Administrative Process Act. No member who participates in an informal proceeding conducted in accordance with § 9-6.14:11 shall serve on a panel conducting formal proceedings pursuant to § 9-6.14:12 to consider the same matter.*

12. *To issue inactive licenses and certificates and promulgate regulations to carry out such purpose. Such regulations shall include, but not be limited to, the qualifications, renewal fees, and conditions for reactivation of such licenses or certificates.*

Under § 54.1-113 increasing fees is mandatory when expenses are more than ten percent greater than revenue. However the Board may exercise discretion in the amount and type of fees which 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.*

These web site address for the text of these statutes is <http://leg1.state.va.us>.

### Purpose

*Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the final regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.*

§ 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. It is projected that by the close of the 1998-2000 biennium, the Board will incur a deficit of \$467,806 or 46% of its total budget for the all programs, and that the deficit will grow to 979,161 or 84% at the end of the 200-2002 biennium, and to 1,513,721 or 123% by the end of the 2002-2004 biennium. Since the fees from licensees and certificate holders no longer generate sufficient funds to pay operating expenses for the Board, a fee increase is essential.

Several factors have contributed to this projected deficit. At the end of the 1992-1994 biennium, the agency's Finance Office identified a 50% surplus in the Board's revenue, which resulted in action by the Board to reduce renewal fees. The Board reduced renewal fees from \$85 annually to \$75 biennially for professional counselor licensure, and from \$40 annually to \$40 biennially for substance abuse counselor certification. These reductions took effect in January, 1997, and were the lowest renewal fees for these credentials since 1982. During the 1996-1998 biennium, the Board's projected budget increased by 33 % due primarily to a doubling in the Board size and increased Board meeting activities for two new licensure programs, salary and fringe increases due to position reallocations, and increases in data processing costs. In addition, due to the increased number of occupations established under the Board, an increased proportion of

staff time in the Behavioral Sciences Unit was being devoted to the Board, resulting in a shift of limited allocations for the Executive Director and Deputy Executive Director from 30% to 50%. Also, one staff member whose time was split evenly among three boards was shifted to 100% devoted to the Board of Licensed Professional Counselors, Marriage and Family Therapists and Substance Abuse Professionals. At the same time, the Board's revenue decreased primarily due to the decreased renewal fees and the loss of renewal fees from 1000 certified rehabilitation providers who declined to renew their certification after a statute change in 1997 made them ineligible for certification beyond July, 2000. Further reductions in revenue are projected in future biennia due to an unexpected lack of interest in the marriage and family therapist licensure category following the initial "grandfathering" year. The Board is also experiencing reductions in the numbers of applicants for substance abuse counselor certification, probably due to anticipation of the upcoming licensure for substance abuse treatment practitioners which should be in effect by Spring, 2000.

Because of the increased expenditures and reduced revenues, the Board is now compelled to increase fees for professional counselor licensure and substance abuse certification to approximately the pre-1997 levels, and to increase application and renewal fees for all categories of licensure and certification according to the *Principles for Fee Development*. Because the current process for correcting deficits is slow, the Board is changing its biennial renewal cycle to annual renewal cycles for all professions to provide for faster adjustments in the budget. While that is a disadvantage to the certificate holders, the alternative of reduced services for the Board would be unacceptable to applicants, certificate holders and the general public. As a specially funded agency, renewal fees pay the vast majority of the expenses of Board operations, which include investigation of complaints against licensees and certificate holders, adjudication of disciplinary cases, verification of certification to other jurisdictions and entities, and communications with licensees and certificate holders about current practice and regulation. Adequate funding is essential to carry out the investigative and disciplinary activities of the Board in order to protect the public health, safety and welfare.

## Substance

*Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement of the regulatory action's detail.*

The amendment increases the renewal fee from \$50 per year to \$55 per year. A new initial certification fee has been included based on the average time from issuance of the initial certification to the first renewal. However, the overall fee for initial certification is reduced by \$10.

The amended fee for a certificate lapsed less than one year is composed of the renewal fee plus 35%. This results in a \$30 reduction in the fee for late renewals. For certificates which have lapsed one renewal period, the board is establishing a reinstatement requirement with a fee based on a credential review fee, the late fee, and ½ of the current renewal fee, since the reissue

is likely to take place after part of the renewal period has already passed. This will replace the current reinstatement requirement of paying the renewal fee and late penalty fee for each year the certificate has lapsed, and will be less costly for individuals whose certificates have lapsed more than one renewal cycle.

A new fee is established for reinstatement of a certificate which has been suspended or revoked to cover the estimated cost of a hearing, including Board member per diems, staff time and associated expenses

Fees for replacement of a duplicate license, duplicate certificate, and processing and collecting on a bad check were based on cost estimates provided by the Deputy Director for Finance of the Department that will be standardized among all boards in the agency.

## Issues

*Please provide a statement identifying the issues associated with the final regulatory action. The term "issues" means: 1) the advantages and disadvantages to the public of implementing the new provisions; 2) the 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, please include a sentence to that effect.*

An analysis of revenues and expenditures conducted at the end of the 1996-1998 biennium projected that under the current fee structure, the Board would face a 46% deficit at the end of the 1998-2000 biennium, an 84% deficit at the close of the 2000-2002 biennium, and a 123% deficit at the close of the 2000-2004 biennium. In order to remain in compliance with §54.1-113 of the Code of Virginia, the Board adopted a proposal for fee increases that will offset the projected deficit through 2004.

In developing the fee proposal, the agency's Finance Office used a new set of principles by which all boards are guided in the development of regulations. *The Principles for Fee Development* are intended to provide structure, consistency, and equity for all professionals regulated within the Department. In consideration of various alternatives and issues surrounding the adoption of fees, the *Principles* served to guide the Board in the development of appropriate and necessary fees.

### **ISSUE 1. Uniformity in renewal and application fees across professions.**

As is stated in the *Principles*, renewal fees for all occupations regulated by a board should be consistent across occupations unless there is clear evidence to indicate otherwise.. Few complaints are received regarding certified rehabilitation providers because their work does not involve the risk of boundary violations characteristic of the counseling professions. Therefore, the Board proposing the same renewal fee for certified rehabilitation providers and certified substance abuse counselors (which also have a low complaint rate due to the limitation to working in supervised settings) established at ½ of the amount proposed for the three independent licensure categories. Also, the credentials review time for the two certification categories is similar, but less than that for the three licensure categories. The Board is proposing

that \$50 of the initial licensure fee be attributed to credentials review for rehabilitation provider applicants, based on the cost of staff time, reviewer time, mailing and copying costs, data processing and telephone costs for each applicant.

### **Advantages and disadvantages to the certificate holders**

All certificate holders will experience a slight increased renewal fee of \$5 per year under the amended regulations. This is to establish a fee in line with the *Principles for Fee Development* which is based on actual costs, and is equivalent to the renewal fee for the board's other certification category. While that is a disadvantage to the certificate holders, the alternative of reduced services for the Board would be unacceptable to applicants, certificate holders and the general public. As a specially funded agency, renewal fees pay the vast majority of the expenses of Board operations, which include investigation of complaints against licensees and certificate holders, adjudication of disciplinary cases, verification of certification and education to other jurisdictions and entities, and communications with licensees and certificate holders about current practice and regulation.

### **ISSUE 2: Establishment of initial certification fees.**

For all professions governed by the Board, the initial licensure/certification fee has historically been considered part of the application fee. This allowed for immediate processing of the certification following notification of a passing exam score for an applicant. However, the fee was not developed according to any set formula consistent among boards in the agency.

One method of assessing an initial certification fee is prorating the fee based on the amount of time remaining in the renewal period. The Board did not establish prorated fees because other boards in the agency have determined that the additional steps involved (assessing fee, notifying applicant, processing check, notifying applicant again check is not mailed until the next fee period begins, etc.) result in delays in certification processing and can create more burden and lost income for the applicant than any benefit from the prorated fees. In the amended regulations, all applicants will be assessed a fee to cover ½ of the renewal period, which is the average initial certification period.

### **Advantages and disadvantages to the certificate holders**

As is stated above, the advantage of not prorating fees is that initial certification can occur in a more timely manner. For those who are applying for certification by examination, the certificate is issued as soon as examination results are forwarded to the Board, usually within one or two working days. For those applying for certification by endorsement, a certificate is typically issued within one or two days of receipt of all verifying documentation.

### **ISSUE 3. Establishment of application and initial certification fee for certification by examination versus certification by endorsement.**

The regulations include fees for application and certification by examination and by endorsement. These fees are identical in each regulation; however, by separating the fees, any future administrative changes that may alter the way the applications are reviewed and can be reflected in the fees. For all professions, examinations fees are paid directly to the examination services, and are not included as part of the initial licensure/certification fee.

#### **Advantages and disadvantages to the certificate holders**

Setting the fees out separately will prevent confusion for applicants who may be expecting an additional cost for endorsement review. Since the review process will be the same, (vendors will make recommendations to the Board regarding endorsement applicants), there is no need for a difference in the fees. However, should the review process change for any reason, the regulations will be formatted to accommodate any differences. There are no disadvantages.

#### **ISSUE 4. Establishment of different fees for renewing an expired certificate versus reinstating a lapsed certificate.**

Currently, the Board's regulations require reapplication and payment of back fees and penalty fees for each lapsed renewal cycle. This can be quite expensive for individuals who wish to return to a Virginia practice after a lengthy absence. In conformance with the *Principles for Fee Development*, the Board is establishing a penalty fee assessed at 35% of the renewal fee for certificates which have lapsed one renewal period, and a reinstatement application requirement for individuals whose certificates have lapsed beyond one renewal period. Since a reinstatement application is required for a certificate holder to reinstate a lapsed certificate, the reinstatement fee includes the current renewal fee, the late fee, and a credential review fee.

#### **Advantages and disadvantages to the certificate holders**

The new regulation presents an advantage for individuals whose certificates have lapsed one or more renewal period, and allows the Board to use discretion as to whether an individual has maintained competency to perform the functions within the scope of practice of the certificate. For individuals who hold multiple licenses and/or certifications, the amendment establishes a consistent policy for each license or certificate held. There are no disadvantages.

#### **ISSUE 5. Reinstatement after revocation**

Reinstatement of a certificate which has been suspended or revoked necessitates an additional cost of a hearing before a panel of the Board. The estimated cost of a hearing, including Board member per diems, staff time and associated expenses is approximately \$500. The Board's amendment compels individuals whose certificates have been suspended or revoked to incur the cost of the reinstatement hearing if they seek reinstatement.

#### **ISSUE 6. Uniformity among boards for setting miscellaneous fees.**



The *Principles* call for uniformity among boards and regulated entities in setting fees for miscellaneous activities of the Board. The Board fees for replacement of a duplicate license, duplicate certificate, and processing and collecting on a bad check are based on cost estimates provided by the Deputy Director for Finance of the Department that will be standardized among all boards in the agency.

### **Advantages and disadvantages to the certificate holders**

The advantage of the regulations is that all persons licensed or certified by a board under the Department of Health Professions will consistently pay a fee for miscellaneous activities determined by actual costs for that activity. There will not be inconsistent fees for licensees regulated under different boards.

### **Advantage or disadvantages to the public**

Fee increases should have no disadvantage to the consuming public. Although there is a slight increase in the renewal fee, overall the fees are being reduced to bring the fee structure for this certification in line with that for the substance abuse counselor certification based on the equivalency in terms of costs to administer the certification programs.

There would be considerable disadvantages to the public if the Board took no action to address its overall deficit and change its fee structures to cover its expenses.

## **Public Comment**

*Please summarize all public comment received during the public comment period and provide the agency response. If no public comment was received, please include a statement indicating that fact.*

No written or verbal public comment on the proposed fee changes was received during the 60 day public comment period.

## **Detail of Changes**

*Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or crosswalk - of changes implemented by the proposed regulatory action. Include citations to the specific sections of an existing regulation being amended and explain the consequences of the changes.*

### **18 VAC 115-40-20. Fees required by the Board.**

Fees are amended as follows:

- The amendment replaces the application processing fee with new initial certification by examination and initial certification by endorsement fees of \$90 to cover the costs of

application processing and review (\$50 per application) plus an initial licensure fee composed of ½ the cost of the proposed renewal fee and a \$10 fee for a wall certificate.

- The renewal fee is increased from the current \$50 annual renewal to a \$55 annual renewal. The proposed renewal fee reflects the cost of the administrative and disciplinary activities of the Board and the allocated costs of the Department.
- The cost for producing and sending a duplicate license has been reduced, so the fee decreases from \$15 to \$5 and reflects the actual cost.
- A decrease in the late renewal fee from \$50 to \$20 establishes a fee that is 35% of the renewal fee in accordance with the agency's *Principles for Fee Development*.
- A new fee of \$100 is established for reinstatement of a certificate that has lapsed beyond one full renewal period. This fee is based on the cost of reviewing a reinstatement application, plus ½ of the annual renewal fee, plus the penalty fee for late renewal.
- The new return check fee of \$25 is estimated to be the actual administrative cost for processing and collecting on a returned check; it is proposed to be the same fee for all boards within the Department.
- A new fee of \$500 is established for reinstatement of a license that has been revoked or suspended following disciplinary action. This fee is based on the cost of the review of the background investigation and reinstatement application, and the cost of holding an informal conference to consider the reinstatement.
- A change is made in the payment instruction to clarify that some fees are paid directly to the Board, and others (not included in the regulation) are established by and paid to the vendor.

#### **18 VAC 115-40-34. Reinstatement.**

Amendments change the current term for late renewal without reinstatement from four years to one year. Beyond the one year renewal period, a reinstatement procedure is established, requiring application for reinstatement and payment of a reinstatement fee. The reinstatement fee is established based on the administrative and review costs which are the same as that determined for initial licensure, plus a late renewal fee. This is in conformance with the *Principles for Fee Development* for all boards within the Department.

#### **18 VAC 115-40-60. Reinstatement following disciplinary action.**

The amendment sets forth a new process and fee for reinstatement of a license which has been suspended or revoked to recover some of the costs for holding a hearing of the Board.

*Please provide an analysis of the regulatory action that assesses the impact on the institution of the family and family stability including the extent to which the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.*

The changes will have no effect on the authority or rights of parents in the education, nurturing and supervision of their children or on the economic self-sufficiency, self pride and assumption of responsibility. The slight increase of \$5 per year in the fee to renew and maintain a certificate to provide rehabilitation services is unlikely to impact the availability of rehabilitation counseling services in Virginia. The most significant impact will be on individuals who seek reinstatement after revocation or suspension of a certificate, but it is considered appropriate to have these costs borne by the offending certificate holders who voluntarily seeks reinstatement, rather than the entire population of certificate holders, the vast majority of which have not committed any offense.