

PRELIMINARY DETERMINATION
NOTICE OF INTENDED REGULATORY ACTION
BOARD OF SOCIAL WORK
DEPARTMENT OF HEALTH PROFESSIONS

ITEM 1: SPECIFIC REASON FOR THE PROPOSED REGULATION

In compliance with Executive Order 15, the Board conducted a comprehensive review of its regulations, entitled 18 VAC 140-20-10 et seq. (VR 620-01-02): Regulations Governing the Practice of Social Work. The purpose of the review was to ensure that the regulation is (i) essential to protect the health and safety of the citizens or necessary for the performance of an important government function; (ii) mandated or authorized by law; (iii) the least burdensome alternative and most reasonable solution; and (iv) clearly written and easily understandable.

In order to identify problems with the existing regulation, the Board solicited public comment at a public hearing held on December 8, 1995. No comment was offered at the hearing, and no written comment was received during the comment period. In the absence of formal oral or written comment, the Board reviewed informal feedback received by staff from applicants requesting clarification or expressing frustration about the regulation. The Board considered this feedback during its analysis of the regulation and consideration of alternatives.

The Board identified the following problems during its analysis of each section of the regulations:

- 18 VAC 140-20-10, *Definitions*, includes some terms that are already defined in statute and others that are not essential to the meaning of the regulation. "*Clinical social work services*" and "*ancillary duties*" have specific meanings as used in the 18 VAC 140-20-50, but are not defined in either statute or regulation.
- It is not stated clearly in statute or regulation that only the *clinical* license classification allows for independent practice.
- 18 VAC 140-20-40, *General requirements*, lacks an endorsement procedure for applicants with lengthy experience as licensed practitioners in other states who have met substantially equivalent requirements to the Board's regulations. Currently, these applicants must document the same information as new practitioners, which involves

verification of supervised practice that may have taken place long ago and is therefore difficult or impossible to verify.

- 18 VAC 140-20-50, *Education and experience requirements for licensed clinical social worker* and 18 VAC 140-20-60, *Education and experience requirements for licensed social worker*, contain verbatim duplication, making the regulation excessively lengthy and difficult to follow. Language setting forth the supervised experience requirements is poorly organized and needs clarification.
- Much of the language in 18 VAC 140-20-70 and 18 VAC 140-20-80 is unnecessary, as fees, policies and examination questions are now determined by a contracted examination service.
- 18 VAC 140-20-90, *Candidates who took and failed an oral examination*, is no longer necessary, as oral examinations are prohibited by statute.

ITEM 2: LEGAL AUTHORITY FOR REGULATION

Section 54.1-2400 establishes duties of health regulatory boards to establish necessary qualifications for registration, certification or licensure to ensure the competence and integrity of regulated practitioners, to examine applicants, to establish renewal schedules, to administer fees to cover the administrative expenses of the regulatory program, and take disciplinary action for violations of law and regulations.

§ 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.*

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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 take appropriate disciplinary action for violations of applicable law and regulations.*
9. *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 (§ 9-6.14:1 et seq.). 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.*

Section 54.1-3703 establishes The Board of Social Work and directs that Board to regulate the practice of social work.

§ 54.1-3703. Board of Social Work; members.--*The Board of Social Work shall regulate the practice of social work.*

The Board shall be composed of seven members, five of whom shall be licensed social workers who have been in active practice of social work for at least five years prior to appointment and two of whom shall be citizen members. The terms of the members of the Board shall be four years.

18 VAC 140-20-10 et seq.: Regulations Governing the Practice of Social Work, were promulgated under the general authority of § 54.1-3700 of the Code of Virginia.

Section 54.1-3700 sets forth definitions for words and terms used in Chapter 37.

§ 54.1-3700. Definitions.--*As used in this chapter, unless the context requires a different meaning:*

"Administration" means the process of attaining the objectives of an organization through a system of coordinated and cooperative efforts to make social service programs effective instruments for the amelioration of social conditions and for the solution of social problems.

"Board" means the Board of Social Work.

"Casework" means both direct treatment, with an individual or several individuals, and intervention in the situation on the client's behalf with the objectives of meeting the client's needs, helping the client deal with the problem with which he is confronted, strengthening the client's capacity to function productively, lessening his distress, and enhancing his opportunities and capacities for fulfillment.

"Casework management and supportive services" means assessment of presenting problems and perceived needs, referral services, policy interpretation, data gathering, planning, advocacy, and coordination

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of services.

"Clinical social worker" means a 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.

"Consultation and education" means program consultation in social work to agencies, organizations, or community groups; academic programs and other training such as staff development activities, seminars, and workshops using social work principles and theories of social work education.

"Group work" means helping people, in the realization of their potential for social functioning, through group experiences in which the members are involved with common concerns and in which there is agreement about the group's purpose, function, and structure.

"Planning and community organization" means helping organizations and communities analyze social problems and human needs; planning to assist organizations and communities in organizing for general community development; and improving social conditions through the application of social planning, resource development, advocacy, and social policy formulation.

"Practice of social work" means rendering or offering to render to individuals, families, groups, organizations, governmental units, or the general public service which is guided by special knowledge of social resources, social systems, human capabilities, and the part conscious and unconscious motivation play in determining behavior. Any person regularly employed by a licensed hospital or nursing home who offers or renders such services in connection with his employment in accordance with patient care policies or plans for social services adopted pursuant to applicable regulations when such services do not include group, marital or family therapy, psychosocial treatment or other measures to modify human behavior involving child abuse, newborn intensive care, emotional disorders or similar issues, shall not be deemed to be engaged in the "practice of social work." Subject to the foregoing, the disciplined application of social work values, principles and methods includes, but is not restricted to, casework management and supportive services, casework, group work, planning and community organization, administration, consultation and education, and research.

"Research" means the application of systematic procedures for the purpose of developing, modifying, and expanding knowledge of social work practice which can be communicated and verified.

"Social worker" means a person trained to provide service and action to effect changes in human behavior, emotional responses, and the social conditions by the application of the values, principles, methods, and procedures of the profession of social work.

Although statute does not specifically mandate the inclusion definitions in its regulations, Part V, Article 2 of the Virginia Register Form, Style and Procedure Manual recommends that definitions of terms be included to provide clarification to terms and allow the regulation writer to control the meaning of a word.

The Board is authorized under § 54.1-2400 to establish renewal schedules, and under § 54.1-103 to specify additional training or conditions for renewal of a license.

§ 54.1-103. Additional training of regulated persons; reciprocity; endorsement.

- A. *The regulatory boards within the Department of Professional and Occupational Regulation and the Department of Health Professions may promulgate regulations specifying additional training or conditions for individuals seeking certification or licensure, or for the renewal of certificates or licenses.*
- B. *The regulatory boards may enter into agreements with other jurisdictions for the recognition of certificates and licenses issued by other jurisdictions.*
- C. *The regulatory boards are authorized to promulgate regulations recognizing licenses or certificates issued by other states, the District of Columbia, or any territory or possession of the United States as full or partial fulfillment of qualifications for licensure or certification in the Commonwealth.*

ITEM 3: REASONING FOR CONTEMPLATED REGULATION

Executive Order 15 stated that “shortcomings in prior rulemaking make essential the comprehensive review of all existing regulations” and directed all Boards to ensure that regulations are clear, essential to protect the public health and safety, and constitute the least burdensome alternatives.

In its review, the Board determined that the current application process is overly burdensome for practitioners from other states licensed by standards substantially equivalent to the Board’s and identified the need to develop a process for endorsement of these applicants.

The Board also determined that the format of the regulations setting forth the education and experience requirements is cumbersome and contains duplication of language that could be eliminated with reorganization..

The Board identified parts of the regulations that need clarification, parts containing language that is superfluous or obsolete, and parts that are vague and require more specificity.

ITEM 4: ALTERNATIVES TO REGULATION

PART I. GENERAL PROVISIONS

Definitions were examined for their regulatory function and their usefulness in clarifying the specific meaning of general terms as used in the context of the regulation.

Alternatives considered for *Definitions* include:

1. Removing duplication by eliminating definitions such as *Board* which are already

defined in statute, and simply referencing the definitions for those terms in the *Code* section where they appear.

2. Removing superfluous definitions for common usage terms such as *applicant* whose meanings are not altered in the context of the regulation.
3. Including definitions for *clinical social work services* and *ancillary services*, which have a specific meaning as used in 18 VAC 140-20-50, but are not currently defined in regulation or statute.

PART II. REQUIREMENTS FOR LICENSURE

The Board considers its requirements for licensure to be the minimal standards necessary to ensure competent services and protection of the public. There is considerable standardization in requirements for social work licensure nationwide, due to the membership of all state boards in the American Association of State Social Work Boards.

The Board conducted an extensive review of its requirements for licensure regulations in 1994 and received public comment on proposed amendments which became effective November, 1995. In its Executive Order 15 review of the regulations, the Board examined frequently misunderstood areas of the regulations and determined that more specificity is needed in some areas, and that some language is superfluous. Additionally, the Board determined that the application process could be simplified for applicants licensed as social workers in other states who have already met Virginia's requirements for licensure.

Alternatives considered for *Requirements for licensure* are:

- 1) Including language allowing for licensure by endorsement for applicants licensed as social workers in other states who have met the requirements set forth in Virginia's regulation.
- 2) Reorganizing the regulation to eliminate verbatim duplication of language in 18 VAC 130-20-50 and 18 VAC 140-20-60.
- 3) Reducing the weekly face-to-face supervision hours required for part time applicants. The Board rejected this alternative because the members felt strongly that 1 hour of contact with the supervisor each week is minimal for protection of the public receiving services from inexperienced practitioners.
- 4) Including for clarification a provision requiring that the supervisor be licensed in the jurisdiction where the supervision is being provided.
- 5) Including a requirement that any individual seeking Board approval to provide supervision must complete a Board-approved supervision training course. The Board rejected this

alternative because approval of training programs would unnecessarily increase the expense of obtaining and maintaining a license. Under its current Standards of Practice, the Board can regulate supervision as a social work service. Individuals providing services without training may be practicing social work outside the area of competency.

- 6) Combining subdivisions and simplifying language where feasible to make the regulation more concise and easier to follow.
- 7) Eliminating subsections that are unnecessary or that duplicate requirements set forth in statute.
- 8) Adding language to clarify for applicants that only licensed *clinical* social workers are entitled by statute to practice independently. Although this distinction is set forth in statute, it is not immediately apparent.

PART III. EXAMINATIONS

The Board determined that the language in *Part III* is no longer necessary, as fees, policies, and examination questions are determined by the contracted examination service. Any language in the regulation describing particulars of the examination could cause logistical problems in the event changes are made by the examination service. Repeal of this language will not dismiss the examination requirement which is already set forth in 18 VAC 140-20-40.

PART IV. ADDITIONAL DOCUMENTATION OF COMPETENCE

Part IV is now obsolete and can be repealed. Prior to 1993, the Virginia Board required an oral examination, but had to rescind this requirement due to an amendment to § 54.1-2400 of the *Code of Virginia* prohibiting oral examinations by any Board in the Agency.

PART V. LICENSURE RENEWAL; REINSTATEMENT

Alternatives considered for *Licensure renewal; reinstatement* are:

- 1) Establishing a higher penalty for late renewal to discourage individuals from practicing on a lapsed license. The Board rejected this because there is no evidence to suggest that this is a significant problem. Current regulations require reapplication for renewals that are late beyond two biennia.
- 2) Establishing a reinstatement procedure for licenses that have lapsed more than 30 days. This alternative was rejected because there is no evidence of harm to the public from practitioners who are renewing late.

- 3) Developing specific documentation requirements for reinstatement of an expired license. This alternative was rejected because current regulations require reapplication for individuals who have not renewed for four years. Endorsement language recommended by the Board will facilitate this process for individuals who are returning to Virginia after maintaining current practice in another jurisdiction.
- 4) Adding language requiring licensees to inform the Board of a change of address within 30 days.

PART VII. STANDARDS OF PRACTICE

Upon examination of *Standards of Practice*, the Board concluded that language as amended in November, 1995 is understandable, enforceable, and functions effectively to protect the public. The only alternative considered by the Board is replacing the word "counseling" with "therapeutic" in item 7, which is more appropriate to the practice of social work.

ITEM 5: EFFECT ON FAMILY FORMATION, STABILITY AND AUTONOMY

The Board is proposing endorsing applicants licensed in other jurisdictions by standards equivalent to the Board's. As practitioners are unable to bill for services without a license, any change that expedites the issuance of that license will positively impact the formation, stability and autonomy of practitioners' families. Families whose members are in need of social work services may benefit from the increased availability of services.