



## Proposed Regulation Agency Background Document

<b>Agency name</b>	Board of Social Work, Department of Health Professions
<b>Virginia Administrative Code (VAC) citation</b>	18 VAC 140-20-10 et seq.
<b>Regulation title</b>	Regulations Governing the Practice of Social Work
<b>Action title</b>	Licensure requirements
<b>Date this document prepared</b>	12/20/10

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Brief summary

*In a short paragraph, please summarize all substantive provisions of new regulations or changes to existing regulations that are being proposed in this regulatory action.*

Regulations governing the practice of social work are amended to: 1) require that the national licensing examination be passed within five years prior to application or, if the examination was passed before that time period, that the applicant demonstrate evidence of social work practice at the appropriate level (social worker or clinical social worker) within an exempt setting prior to application; 2) eliminate certain application requirements for licensure by endorsement applicants and, at the same time, clarify the meaning of “active practice” to demonstrate competency in the field of social work and provide an alternative to the experience requirement; and 3) address the issue of reactivation and reinstatement for applicants who have either been not practicing social work in recent years or practicing elsewhere in an exempt setting by requiring practice under supervision for at least 360 hours in the 12 months preceding licensure in Virginia.

### Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.

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LSW – licensed social worker

LCSW – licensed clinical social worker

### Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

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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 determine the qualifications for licensure and reinstatement and 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.*
- 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, license or issue a multistate licensure privilege to qualified applicants as practitioners of the particular profession or professions regulated by such board.*
- 4. To establish schedules for renewals of registration, certification, licensure, and the issuance of a multistate licensure privilege.*
- 5. To levy and collect fees for application processing, examination, registration, certification or licensure or the issuance of a multistate licensure privilege 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 (§ 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.*
- 7. To revoke, suspend, restrict, or refuse to issue or renew a registration, certificate, license or multistate licensure privilege which such board has authority to issue for causes enumerated in applicable law and regulations...*

## Purpose

*Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal, the environmental benefits, and the problems the proposal is intended to solve.*

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The board has adopted amendments to make it less burdensome for persons who have been actively practicing as social workers or clinical social workers in another state to be licensed in Virginia. To do so, regulations need to clarify or define the intent and meaning of “active practice” to ensure current competency to practice. With active practice and no grounds for denial of licensure, the applicant could be licensed by credentials and the requirements for documentation of education and supervised experience could be eliminated.

Additionally, the board has addressed an issue of competency for applicants who passed the national examination some years ago but were never licensed and never practiced social work in any jurisdiction. To do so, a regulation is proposed to specify that the examination must have been passed within five years prior to application or the applicant must provide evidence of practice in an exempt setting in the category of social work for which he has applied to be licensed.

Finally, the board has addressed concerns about persons who are seeking to reinstate or reactivate a license that has been lapsed or inactive for four or more years. If the applicant has been practicing in another state during that period, that practice could serve as evidence of current competency; but if the applicant has not practiced social work for a number of years, there needs to be a period of supervised practice as evidence of competency.

## Substance

*Please briefly identify and explain new substantive provisions (for new regulations), substantive changes to existing sections or both where appropriate. (More detail about all provisions or changes is requested in the “Detail of changes” section.)*

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The Board of Social Work reviewed staff concerns regarding application requirements and recommended that the board adopt proposed amendments to the following regulatory sections:

- Amend Regulation 18VAC140-20-40 and 18VAC140-20-51 to address the problem of applicants who passed the examination a number of years prior to application but were never licensed in Virginia or in another jurisdiction. The amendment would require that the national licensing examination be passed within five years prior to application or, if the examination was passed before that time period, that the applicant demonstrate evidence of social work practice at the appropriate level (social worker or clinical social worker) within an exempt setting prior to application.

- Amend Regulation 18VAC140-20-45 to eliminate certain application requirements for licensure by endorsement applicants and, at the same time, to clarify the meaning of “active practice” to demonstrate competency in the field of social work. Currently, regulations require an applicant for licensure by endorsement to have actively practiced for 36 of the past 60 months; amended regulation would provide an alternative of supervised experience equivalent to that required for licensure by examination.
- Amend Regulation 18VAC140-20-110 to address the issue of reactivation and reinstatement for applicants who have either been not practicing social work in recent years or practicing elsewhere in an exempt setting by requiring practice under supervision for at least 360 hours in the 12 months preceding licensure in Virginia.

**Issues**

*Please identify the issues associated with the proposed regulatory action, 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 the regulatory action poses no disadvantages to the public or the Commonwealth, please indicate.*

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- 1) The advantage to the public is greater assurance of current competency in knowledge and skill to practice, especially at the clinical level, by requiring recent passage of the licensure examination or evidence of practice in an exempt setting. Likewise, applicants who have allowed a license to lapse or who are inactive would have to demonstrate minimal competency or practice for a short time under supervision. Elimination of some burdensome requirements for licensure by endorsement may encourage social workers to come to Virginia for practice, thus increasing the supply of practitioners. There are no disadvantages.
  - 2) Currently, if an applicant is denied licensure or if there are questions about eligibility, credentialing issues must be resolved through a lengthy and costly administrative process involving the Credentials Committee or an informal conference and finally a formal hearing. By clarifying the regulations with more precise rules to follow, an applicant, board staff and board members will all have a clearer understanding of the competency requirements for licensure and the Board will incur less cost. There are no disadvantages.
  - 3) There are no other pertinent matters.

**Requirements more restrictive than federal**

*Please identify and describe any requirements of the proposal, which are more restrictive than applicable federal requirements. Include a rationale for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.*

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There are no applicable federal requirements.

**Localities particularly affected**

*Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.*

No locality is affected by the proposed regulation.

**Public participation**

*Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulated community.*

In addition to any other comments, the board/agency is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the agency/board is seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments may do so via the Regulatory Townhall website, [www.townhall.virginia.gov](http://www.townhall.virginia.gov), or by mail to Elaine Yeatts, Agency Regulatory Coordinator, 9960 Mayland Drive, Henrico, VA 23233 or [elaine.yeatts@dhp.virginia.gov](mailto:elaine.yeatts@dhp.virginia.gov) or by fax to (804) 527-4434. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by the last date of the public comment period.

A public hearing will be held and notice of the public hearing may appear on the Virginia Regulatory Town Hall website ([www.townhall.virginia.gov](http://www.townhall.virginia.gov)) and the Commonwealth Calendar. Both oral and written comments may be submitted at that time.

**Economic impact**

*Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirements create the anticipated economic impact.*

<p><b>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source, and (b) a delineation of one-time versus on-going expenditures.</b></p>	<p>a) 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 for necessary functions of regulation; b) The agency will incur some one-time costs (less than \$500) for mailings to the Public Participation Guidelines</p>
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	mailing lists, conducting a public hearing, and sending notice of final regulations to regulated entities. Every effort will be made to incorporate those into anticipated mailings and Board meetings already scheduled. There are no on-going costs to the agency.
<b>Projected cost of the new regulations or changes to existing regulations on localities.</b>	None
<b>Description of the individuals, businesses or other entities likely to be affected by the new regulations or changes to existing regulations.</b>	The entities that are likely to be affected by these regulations would be a small number of persons applying for licensure by the Board of Social Work who do not meet current requirements for licensure by endorsement or person who have not been able to demonstrate current competency to practice.
<b>Agency's best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected.</b> Small business means 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.	The number of such entities that are small business is unknown. Many of the licensed clinical social workers are independent practitioners, but some work for large hospital systems, government agencies or in other settings. Licensed social workers do not practice independently and would be employees of school systems, government agencies, health care systems, etc.
<b>All projected costs of the new regulations or changes to existing regulations for affected individuals, businesses, or other entities. Please be specific and include all costs. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses. Specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.</b>	There are no additional costs; elimination of certain documentation for licensure by endorsement should result in a modest cost savings for applicants.
<b>Beneficial impact the regulation is designed to produce.</b>	Applicants for licensure by endorsement would have less burdensome requirements, while all applicants approved for licensure would have recent evidence of minimal competency to practice.

**Alternatives**

*Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. 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 regulation.*

There are no alternatives to the proposed regulatory action that would provide the clarity necessary for making decisions on the competency of an applicant to practice. Currently, if an applicant passed the examination a number of years ago but never completed the application process and never practiced, the board has no grounds on which to deny licensure even though

there is no recent evidence of competency or even minimal knowledge of social work practice. Likewise, the board has no grounds to deny an applicant for licensure by endorsement, who is required to be engaged in active practice for 36 of the past 60 months, if evidence shows that “active practice” was one day of volunteer work each year.

Conversely, current regulations require an applicant for licensure by endorsement to provide extensive documentation of education and supervised experience substantially equivalent to such requirements for a new applicant by examination. If a person has been licensed in another state, has been actively practicing, has no unresolved disciplinary action and no history that would provide grounds for denial, requirements for documentation on which the original license was issued by another state is unnecessary and overly burdensome.

Currently, if an applicant is denied licensure or if there are questions about eligibility, credentialing issues must be resolved through a lengthy and costly administrative process involving the Credentials Committee or an informal conference and finally a formal hearing. By clarifying the regulations with more precise rules to follow, an applicant, board staff and board members will all have a clearer understanding of the competency requirements for licensure.

**Regulatory flexibility analysis**

*Please 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) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of 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 proposed regulation.*

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There are no alternative regulatory methods to accomplish the objectives of applicable law, which requires the Board to establish qualifications for licensure in regulation.

**Public comment**

*Please summarize all comments received during the public comment period following the publication of the NOIRA, and provide the agency response.*

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The Notice of Intended Regulatory Action was published on August 2, 2010 with comment until September 1, 2010. There were no written or electronic comments received.

**Family impact**

*Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent 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.

There is no impact on the institution of the family and family stability.

**Detail of changes**

*Please list all changes that are being proposed and the consequences of the proposed changes. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact if implemented in each section. Please describe the difference between the requirements of the new provisions and the current practice or if applicable, the requirements of other existing regulations in place.*

<b>Current section number</b>	<b>Current requirement</b>	<b>Proposed change, rationale, and consequences</b>
10	Sets out definitions for words and terms used in regulation.	<p>Adds a definition for “active practice” to clarify the Board’s minimal interpretation as applied in requirements for licensure or re-licensure.</p> <p><i>The definition of active practice is minimal - 360 hours in a 12-month period is approximately 9 weeks or full-time or 18 weeks or more of part-time work.</i></p>
40	Establishes requirements for licensure by examination for a clinical social worker	<p>Specifies that an applicant for licensure by examination shall provide evidence of passage of the examination prescribed in section 70. Further requires that if the examination was not passed within five years preceding application for licensure, the applicant may qualify by documentation of providing clinical social work services in an exempt setting for at least 360 hours per year for two of the past five years.</p> <p><i>The Board has recently received a few applications from persons who passed the licensure examination many years ago but never practiced clinical social work. They are now seeking a clinical license, which will authorize them to provide independent clinical services – the provision of which can have serious consequences to the mental health and well-being of a client. Without a time limitation of the validity of the examination, the Board is unable to deny licensure, even though there is <u>no</u> evidence of current competency in knowledge or skills.</i></p> <p><i>The Board has provided an exception to the five-year rule on passage of the examination, if an applicant can show that he/she has been providing clinical services in an exempt setting in which a license was not required. The minimal practice requirement would be at least 360 hours per year for two of the past five years, which is consistent with the definition of “active practice,” except the definition specifies “post-licensure” practice and persons</i></p>



		<p><i>seeking licensure by examination would not have “post-licensure” practice.</i></p>
<p>45</p>	<p>Establishes the requirements for licensure by endorsement</p>	<p>Subdivision 2 is amended to change the requirement for documentation of social work licensure in good standing obtained by standards substantially equivalent to those required for original licensure by examination in Virginia to accept licensure by standards required for licensure in another jurisdiction.</p> <p><i>The changes to licensure by endorsement are all intended to remove barriers to qualified persons seeking licensure in Virginia. If a person has been licensed in another state and has actively practiced with safety and skill in that state, documentation of particular coursework and hours of supervised experience that may have been obtained many years ago is not necessary as evidence of competency.</i></p> <p>The Board has clarified that the licensure in the other jurisdiction shall be of a comparable type as the licensure which the applicant is seeking in Virginia.</p> <p><i>It is necessary to so specify to ensure that a person who does not have a clinical license in another state does not qualify for licensure as a clinical social worker by endorsement into Virginia.</i></p> <p>Subdivision 3 is amended to clarify that passing score required for the national exam is at the level for which the applicant is seeking licensure in Virginia.</p> <p><i>Again, the Board is seeking to ensure that someone seeking a clinical license is qualified by passage of the clinical examination.</i></p> <p>Subdivision 4 is deleted to eliminate the requirement for an official transcript or transcripts in the school's original sealed envelope.</p> <p><i>Elimination of the transcript requirement will alleviate a problem for some applicants who have difficulty obtaining a transcript from a program that may no longer exist. Verification from the other state that the applicant met all educational requirements at the time of initial licensure will suffice.</i></p> <p>Subdivision 5 (new #4) will offer an alternative to the current requirement for verification of active practice in another jurisdiction for 36 out of the past 60 months and allow <u>evidence of supervised experience requirements substantially equivalent to those outlined in 18VAC140-20-50 and 18VAC140-20-60.</u></p>
<p>51</p>	<p>Establishes requirements for licensure by examination for licensed social workers</p>	<p>Adds a requirement that an applicant for licensure by examination shall provide evidence of passage of the examination prescribed in 18VAC140-20-70. If the examination was not passed within five years preceding application for licensure, the applicant may qualify by documentation of providing social work services in an</p>

		<p>exempt setting for at least 360 hours per year for two of the past five years.  <i>See explanation for changes in section 40 above. For the social worker license, it is not necessary for the examination and practice to be clinical in nature since an LSW does not provide clinical services or practice independently.</i></p>
<p>110</p>	<p>Establishes the requirements for reinstatement or reactivation of a license</p>	<p>Subsections B and C are amended to specify the additional evidence necessary to ensure that an applicant for reinstatement or reactivation has minimal competency to practice. Such evidence may include documentation of:</p> <ol style="list-style-type: none"> <li><u>1. Active practice in another U. S. jurisdiction for at least three of the past five years immediately preceding application; or</u></li> <li><u>2. Active practice in an exempt setting for at least three of the past five years immediately preceding application; or</u></li> <li><u>3. Practice as a resident under supervision for at least 360 hours in the 12 months immediately preceding licensure.</u></li> </ol> <p><i>If an applicant has not actively practiced in another jurisdiction, either with a license or in an exempt setting for three of the past five years, his/her option would be to practice under supervision as a resident for at least 360 hours preceding licensure. The Board believes that a social work or clinical social worker who has not held a Virginia license for four or more years and who wants to resume practice should have some recent experience or should practice for a period of time under supervision to ensure current knowledge and skills.</i></p>