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Fast-Track Regulation Agency Background Document

Agency name	Board of Social Work; Department of Health Professions
Virginia Administrative Code (VAC) citation(s)	18VAC140-20
Regulation title(s)	Regulations Governing the Practice of Social Work
Action title	Licensure requirements
Date this document prepared	9/22/15

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (preferably no more than 2 or 3 paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

Licensure regulations are amended for: 1) clarification of application requirements and inclusion of a requirement for submission of a current report form the national practitioner data bank about the disciplinary and malpractice history of the applicant; 2) a reduction in the years of active practice required for endorsement or reinstatement; 3) less restrictive and confusing requirement for hours of face-to-face client contact during supervision, for acceptance of supervision obtained in another U. S. jurisdiction, and fewer years of post-licensure experience required to be a supervisor; 4) clarification about the requirement for registration of supervision whenever there is a change that affects the experience approved by the Board; 5) more specificity about a request for extension of supervised practice and about the responsibilities of the supervisor; and 6)

clarification that the grounds for disciplinary action apply to registered supervisees as well as licensees.

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.

N/A

Statement of final agency action

Please 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.

On July 24, 2015, the Board of Social Work voted to amend 18VAC140-20-10 et seq., Regulations Governing the Practice of Social Work, by a fast-track action.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including: 1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable; and 2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person's overall regulatory authority.

Regulations are promulgated under the general authority of Chapter 24 of Title 54.1 of the Code of Virginia. Section 54.1-2400, which provides the Board of Social Work the authority to promulgate regulations to administer the regulatory system:

§ 54.1-2400 -General powers and duties of health regulatory boards

The general powers and duties of health regulatory boards shall be:

...

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 (§ 54.1-100 et seq.) and Chapter 25 (§ 54.1-2500 et seq.) of this title. ...

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Describe the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

The goals of the proposal are to address issues and a lack of clarity with some of the licensure requirements. More explicit but less restrictive application requirements may facilitate licensure for some clinical social workers who can provide mental health services in Virginia, but the requirement for a report from the national practitioner databank will ensure that applicants with a history of disciplinary action or malpractice will be carefully scrutinized before a licensure decision is made. Likewise, clarification of the regulations for supervised experience will ensure that supervisees are appropriately supervised in the provision of clinical services and therefore offer more protection for clients and the general public.

Rationale for using fast-track process

Please explain the rationale for using the fast-track process in promulgating this regulation. Why do you expect this rulemaking to be noncontroversial?

The amendments adopted are either requested by the professional society, clarifying and intended to resolve issues with regulations, or are less restrictive for applicants and licensees. They should not be controversial.

Substance

Please 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.

Licensure regulations are amended for: 1) clarification of application requirements and inclusion of a requirement for submission of a current report form the national practitioner data bank about the disciplinary and malpractice history of the applicant; 2) a reduction in the years of active practice required for endorsement or reinstatement; 3) less restrictive and confusing requirement for hours of face-to-face client contact during supervision, for acceptance of supervision obtained in another U. S. jurisdiction, and fewer years of post-licensure experience required to be a supervisor; 4) clarification about the requirement for registration of supervision whenever there is a change that affects the experience approved by the Board; 5) more specificity about a request for extension of supervised practice and about the responsibilities of the supervisor; and 6) clarification that the grounds for disciplinary action apply to registered supervisees as well as licensees.

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 there are no disadvantages to the public or the Commonwealth, please indicate.

- 1) The primary advantages to the public would be greater clarity about the responsibilities of supervisees and supervisors so persons receiving social work services, especially those that are clinical in nature, have more assurance of appropriateness and competency. Additionally, a less stringent practice requirement may enable a few clinical social workers to qualify for licensure by endorsement or reinstatement; there are no disadvantages to the public.
- 2) The primary advantage to the agency is more clarity in regulation which reduces questions and confusion; there are no disadvantages.
- 3) There are no other pertinent matters of interest.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include 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 statement to that effect.

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.

There are no localities particularly affected.

Regulatory flexibility analysis

Pursuant to § 2.2-4007.1B of the Code of Virginia, 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.

There no alternative regulatory methods, consistent with health and safety of clients receiving social work services from registered supervisees or licensees.

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 requirement creates the anticipated economic impact.

<p>Projected cost to the state to implement and enforce the proposed regulation, including: a) fund source / fund detail; and b) a delineation of one-time versus on-going expenditures</p>	<p>There are no cost to implement and enforce the proposed regulation since the amendments are clarification of current board policy and guidance.</p>
<p>Projected cost of the new regulations or changes to existing regulations on localities.</p>	<p>There are no costs to localities.</p>
<p>Description of the individuals, businesses, or other entities likely to be affected by the new regulations or changes to existing regulations.</p>	<p>Licensed clinical social workers, licensed social workers, applicants for licensure, supervisees and supervisors</p>
<p>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. Small business means a business entity, including its affiliates, that: a) is independently owned and operated and; b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>There are 5933 persons licensed as clinical social workers and 581 licensed as social workers. It is not known how many are working in small businesses. However, the 2013 survey of clinical social workers conducted by the Healthcare Workforce Data Center at DHP reported that 38% were in solo or group private practice, so it is assumed that number would be small business entities. Since licensed social workers must practice under supervision and not independently, none of that number would be small businesses. There are currently 1459 persons registered as supervisees; none would be small businesses.</p>
<p>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 including: a) the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; and b) 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.</p>	<p>There will be an additional cost of \$5 for applicants for the submission of a report from the national practitioner databank.</p>
<p>Beneficial impact the regulation is designed to produce.</p>	<p>The regulation is designed to provide greater clarity and consistency with current Board practices and interpretations. Mores specificity about the responsibilities of supervisees and supervisors also offers greater public protection in the provision of clinical social work services.</p>

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.

Enter statement here

Public participation notice

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.

Family impact

Please assess the impact of this 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; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action. If the proposed regulation is intended to replace an emergency regulation, please list separately: (1) all differences between the **pre-emergency** regulation and this proposed regulation; and 2) only changes made since the publication of the emergency regulation.*

Current section number	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
40	Requirements for licensure by examination for clinical social worker	1) Require submission of a completed application within two years of completion of supervised experience. <i>If an applicant fails to complete the application within a two-year period following his supervision, it is unlikely that supervisors will be able to adequately document the services provided and the application will be problematic.</i> 2) Specify that the out-of-state licenses that must be documented are health or mental health licenses as

		<p>opposed to a license or certificate that is unrelated to the profession.</p> <p>3) Require a current report from the U. S. Department of Health and Human Services Data Bank. <i>Applicants will incur an additional cost of \$5 for requesting a report on their disciplinary and malpractice history, but there is a significant public safety benefit.</i></p> <p>4) Eliminate the provision that allows an applicant to qualify by practice in an exempt setting if the exam was not passed within 5 years preceding application. <i>There is no requirement for passage within 5 years preceding application, so the provision was unnecessary and confusing.</i></p>
45	Requirements for licensure by endorsement for clinical social worker and social worker licensure	<p>Subsection A is amended by:</p> <p>1) Adding the word “active” social work licensure to ensure the applicant does not hold an inactive or expired license if applying for licensure by endorsement.</p> <p>2) Eliminating the “board-approved form” because documentation from other states is often provided in an electronic format from other boards.</p> <p>3) Specifying a requirement for documentation of any other health or mental health licenses, if applicable. <i>Requirement is identical to licensure by examination.</i></p> <p>4) Requiring a current report from the U. S. Department of Health and Human Services Data Bank. <i>Applicants will incur an additional cost of \$5 for requesting a report on their disciplinary and malpractice history, but there is a significant public safety benefit.</i></p> <p>5) Modifying the active practice requirement to allow 24 of the past 60 months rather than the current requirement of 36 months. <i>The active practice option for endorsement benefits an applicant who can demonstrate such practice, either as a licensee or in an exempt setting. If the applicant does not have the requisite months of active practice, he may apply and be licensed based on providing evidence of supervised experience that is substantially equivalent to that required for licensure by examination.</i></p> <p>Subsection B is added to specify by regulation the Board’s current policy of allowing an applicant for licensure by endorsement to sit for the national board-approved examination at the level for which he is seeking licensure in Virginia, if he does not pass that examination in the other jurisdiction.</p>
50	Experience requirements for a licensed clinical social worker	<p>Subsection A is amended by:</p> <p>1) Allowing supervision obtained in another jurisdiction to be accepted if it met requirements of that jurisdiction. <i>Current regulation provides that supervision must be registered and have prior approval in order for it to be accepted. If an applicant began supervised experience in another state and then moved to Virginia, he cannot have that experience counted. The Credentials Committee has made exceptions, but the regulation needs to be amended to consistencies allow for such situations.</i></p> <p>2) Requiring that an applicant must register whenever there is an addition or change of supervised practice,</p>

		<p>supervisor, clinical services, or location. <i>Currently, any such change does require re-registration because it is a new supervised experience and has not been approved. The Board has approved a supervisor, a practice location, and the description of clinical services that will be provided, so a change in circumstances is a new supervised experience and must be registered. While instructions for supervision specify that you must register any new supervisor, practice, or location, the amendment is clarifying so regulations will be consistent with the Board's requirement.</i></p> <p>3) Including the ancillary services that support clinical social work services in the minimum of 3,000 hours. <i>The current regulation stating a minimum of 3,000 hours in the delivery of clinical social work services is confusing because it is further stated the minimum number of hours that have to be face-to-face client contact in clinical services with the remaining hours in ancillary services supporting. The proposed amendment is clarifying for supervisors and supervisees.</i></p> <p>4) Clarifying the intent and policy of the Board that the maximum period for obtaining clinical supervision is four consecutive years. <i>There is a provision to extend the time period for extenuating circumstances but the purpose of the time limit is to eliminate "professional supervisees" who continue to practice indefinitely without passing an examination and becoming licensed.</i></p> <p>5) Eliminating the requirement for averaging no less than 15 hours per 40 hours of work experience in face-to-face client contact and specifying that the client contact hours in the delivery of clinical services should be obtained throughout the hours of supervision. <i>The change was requested by the clinical society and will resolve issues that some applicants have in meeting the supervision requirement. The intent of the current requirement is to ensure that face-to-face client contact is a part of the supervised experience throughout the entire period of supervision. The amendment will allow more flexibility and result in less confusion.</i></p> <p>6) Permitting an applicant who cannot complete supervision in four years to request an extension of no more than 12 months by demonstrating the extenuating circumstances that prevented completion. <i>Current regulation allows for submission of evidence of why training should be allowed to continue, but there is no guidance on the length of the extension or the type of evidence required. Amended regulation will provide a more definitive, less arbitrary guide to follow.</i></p> <p>Subsection B is amended by:</p> <p>1) Reducing the requirement for supervisors from 3 years of post-licensure experience to 2 years and allowing the board to consider supervisors with commensurate qualifications if supervision was obtained in another jurisdiction. <i>The changes will increase the pool of licensees available to provide supervision.</i></p>
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51	Requirements for licensure by examination for licensed social workers	Amendments to section 51 are the same as changes in section 40 for licensure by examination for licensed <u>clinical</u> social workers for consistency – see explanation for section 40.
60	Requirements for education and experience for a licensed social worker	Amendments to section 60 are similar to changes in section 50, which sets out the requirements for supervised experience for licensed <u>clinical</u> social workers, as applicable.
70	Requirements for examination	<p>Subsection B is amended by:</p> <ol style="list-style-type: none"> 1) Requiring an applicant who has failed the national examination twice to register and complete an additional year of supervision. <i>The Board believes that a person with multiple failures has demonstrated that he is not minimally competent and is unlikely to pass the examination with some additional training.</i>
110	Requirements for late renewal; reinstatement or reactivation	<p>Subsections A and B are amended identical to Project 2391 for a fee increase and change to annual renewal.</p> <p>Subsection B is also amended by:</p> <ol style="list-style-type: none"> 1) Changing the requirement for active practice to reinstate a lapsed license from three of the past five years to 24 of the past 60 months. <i>The change will allow some applicants to be reinstated without meeting the requirement for practice as a supervisee for 360 hours.</i> <p>Subsection C for reactivation is amended consistent with subsection B for reinstatement.</p>

<p>150</p>	<p>Standards of professional conduct</p>	<p>Subsection D is amended by:</p> <ol style="list-style-type: none"> 1) Clarifying that the prohibition on dual relationships that could impair professional judgment or increase the risk of exploitation or harm extends to supervisees as well as clients. 2) Adding romantic relationships to sexual intimacies. <i>Both changes are consistent with recent changes to regulations of other behavioral sciences professions.</i> <p>Subsection E is added to ensure the professional conduct required in the Code is included as a standard in regulation. If they learn that another mental health professional may be guilty of a violation of standards of conduct, they are required to tell clients of their right to report.</p>
<p>160</p>	<p>Grounds for disciplinary action or denial of issuance of a license</p>	<p>Section 160 is amended to clarify that persons registered with the Board as supervisees are subject to disciplinary action based on violations of law or regulation.</p> <p>The section is also amended to include as grounds for disciplinary action the failure to provide supervision in accordance with sections 50 or 60. <i>While aiding and abetting another to violate any statute or regulation may be cited against a supervisor if there are problems with a supervisee, specific language about failure to provide supervision in accordance with regulation offers more assurance that the Board can discipline a supervisor for clear violations of law or regulation.</i></p>