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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	Mid-level licensure
Date this document prepared	July 13, 2018

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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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.

Pursuant to Chapter 451 of the 2018 Acts of the Assembly (HB614), the Board of Social Work has adopted amendments to 18VAC140-20-10 et seq., relating to the division of the category of “licensed social worker” into two licensure categories of “baccalaureate social worker” and “master’s social worker.”

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.

LBSW = licensed baccalaureate social worker.

LMSW = licensed master's social worker.

LSW = licensed social worker

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 June 15, 2018, the Board of Social Work approved amendments to 18VAC140-20, Regulations Governing the Practice of Social Work.

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:

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.) that are reasonable and necessary to administer effectively the regulatory system, which shall include provisions for the satisfaction of board-required continuing education for individuals registered, certified, licensed, or issued a multistate licensure privilege by a health regulatory board through delivery of health care services, without compensation, to low-income individuals receiving health services through a local health department or a free clinic organized in whole or primarily for the delivery of those health services. 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.).

Amendments to Chapter 37 of Title 54.1 in Chapter 451 of the 2018 Acts of the Assembly defined the two categories of mid-level licensure and authorized the Board to license.

§ 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.

"Baccalaureate social worker" means a person who engages in the practice of social work under the supervision of a master's social worker and provides basic generalist services, including casework management and supportive services and consultation and education.

"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 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.

"Master's social worker" means a person who engages in the practice of social work and provides non-clinical, generalist services, including staff supervision and management.

"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.

§ 54.1-3705. Specific powers and duties of the Board.

In addition to the powers granted in § [54.1-2400](#), the Board shall have the following specific powers and duties:

1. To cooperate with and maintain a close liaison with other professional boards and the community to ensure that regulatory systems stay abreast of community and professional needs.
2. To conduct inspections to ensure that licensees conduct their practices in a competent manner and in conformance with the relevant regulations.
3. To designate specialties within the profession.
4. Expired.
5. *To license baccalaureate social workers, master's social workers, and clinical social workers to practice consistent with the requirements of the chapter and regulations of the Board.*
6. To register persons proposing to obtain supervised post-degree experience in the practice of social work required by the Board for licensure as a clinical social worker.

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 proposed regulatory action is adopted to implement changes in the Code for two levels of midlevel licensure. The requirements for licensure of BSWs and MSWs are not substantially different from the current requirements for an LSW license, but the MSW will be required to take the master's level examination for evidence of competency to provide services to the public consistent with public health and safety.

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 proposed regulation does not alter the basic requirements for licensure, including the fees charged to applicants or licensees. Those who are currently licensed as LSWs will be able to self-designate whether they are LBSWs or LMSWs. The proposed amendments conform regulations to the 2018 legislation and 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.

Throughout the chapter, the term "licensed social worker" is deleted and replaced by the two categories of midlevel licensure – LBSW and LMSW. Education, experience and examination requirements are specified in accordance with the level of a baccalaureate or master's degree.

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 public may be better served by more clear designation of the licensure type (whether the licensed social worker holds a baccalaureate or master's degree); there are no disadvantages to the public. The current category of licensed social worker is being divided into two mid-level licenses.
- 2) There are no advantages or disadvantages to the agency or the Commonwealth.

- 3) The Director of the Department of Health Professions has reviewed the proposal and performed a competitive impact analysis. The Board is authorized under 54.1-2400 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.*” There is no restraint on competition as a result of promulgating this regulation.

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 is no alternative to the promulgation of an amended regulation in order to implement provisions of Chapter 451 (2018 General Assembly).

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>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 or entities for necessary functions of regulation. All notifications will be done electronically. There are no on-going expenditures.</p>
<p>Projected cost of the new regulations or changes to existing regulations on localities.</p>	<p>None</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>Social workers at the baccalaureate or master’s level</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 currently 763 LSWs; it is estimated that 80% of them will self-designate as LMSW (attest that they hold a master’s degree). The Board licenses approximately 35 new LSWs each quarter. It is likely that most licensed social workers are employed in institutions/hospitals/school systems/etc. and would not be considered 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 are no costs associated with the revised regulations.</p>
<p>Beneficial impact the regulation is designed to produce.</p>	<p>More consistency with other states to improve portability; greater transparency to the public about the competency level of the two midlevel license types.</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.

This amended regulation is not intrusive or burdensome; there is no alternative that meets the essential purpose of protection of the public.

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 family.

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 follow the instructions in the text following the three chart templates below.

Throughout the chapter, the term “licensed social worker” is deleted and replaced by the two categories of midlevel licensure – LBSW and LMSW

Current section number	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
10	Sets forth definitions for words and terms used in regulation	Amendments reference the definitions in the Code for “baccalaureate social worker” and “master’s social worker” and add definitions for LBSW and LMSW, so those acronyms can be used in regulation.
30	Sets out fees charged to applicants and licensees	Amendments to fees retain the same fees that are currently charged to applicants and persons licensed as LSW; those fees are separated into the two license types – LBSW and LMSW.
51	Sets out requirements for licensure by examination for licensed social workers	Requirements for LBSW and LMSW are identical to the current requirements for LSW licensure. The documentation specified in B 3 is identical to the requirements currently in 2 a. Since only a baccalaureate-level applicant is required to have supervised practice prior to licensure (section 60), that requirement is specified for only those applying for the LBSW license.

60	Sets out the education and experience requirements for licensed social workers	<p>The education specified in subsection A is divided according to the type of license one is seeking. Currently, someone with either a bachelor's or master's degree applies for as a LSW. With the division of the LSW into two midlevel licenses, the educational requirement is specifies for each.</p> <p>Subsection B currently states that supervised experience is not required for a LSW with a master's degree; therefore, it is not required for someone seeking a LMSW license.</p> <p>Subsection C is current language for someone who has a bachelor's degree and will apply to those seeking a LBSW.</p>
70	Sets out the examination requirements for a licensed social worker	<p>Currently, the examination required is minimally the licensing examination at the bachelor's level. In the amended regulation, the LBSW continues to take that examination, but the examination prescribed for licensure as a LMSW will the licensing examination at the master's level.</p>