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Final Regulation Agency Background Document

Agency name	Board of Counseling, Department of Health Professions
Virginia Administrative Code (VAC) citation(s)	18VAC115-20 18VAC115-30 18VAC115-40 18VAC115-50 18VAC115-60
Regulation title(s)	Regulations Governing the Practice of Professional Counselors Regulations Governing the Certification of Substance Abuse Counselors Regulations Governing the Certification of Rehabilitation Providers Regulations Governing the Practice of Marriage and Family Therapists Regulations Governing the Licensure of Substance Abuse Professionals
Action title	Increase in fees
Date this document prepared	11/4/16

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 of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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

Renewal fees for the three licensed professions will increase from \$105 to \$130; for the certified professions, the increase will be from \$55 to \$65. Application and initial licensure fees for the

licensed professions will increase from \$140 to \$175; for the certified professions, the increase will be from \$90 to \$115. All other fees will be increased by approximately 25%.

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.

LPC = licensed professional counselor
 MFT = marriage and family therapist
 SATP = substance abuse treatment practitioner
 CSAC = certified substance abuse counselor
 SACA = substance abuse counseling assistant
 CRP = certified rehabilitation provider

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 November 4, 2016, the Board of Counseling amended 18VAC115-20 Regulations Governing the Practice of Professional Counselors; 18VAC115-30 Regulations Governing the Certification of Substance Abuse Counselors; 18VAC115-40 Regulations Governing the Certification of Rehabilitation Providers; 18VAC115-50 Regulations Governing the Practice of Marriage and Family Therapists; 18VAC115-60 Regulations Governing the Licensure of Substance Abuse Professionals.

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 of the Board of Counseling are promulgated under the general authority of Title 54.1, Chapter 24 of the Code of Virginia.

Chapter 24 establishes the general powers and duties of health regulatory boards including the responsibility to promulgate regulations in accordance with the Administrative Process Act which are reasonable and necessary and the authority to **levy and collect fees** that are **sufficient to cover all expenses** for the administration of a regulatory program.

§ 54.1-2400. General powers and duties of health regulatory boards.--The general powers and duties of health regulatory boards shall be:

- 5. To levy and collect fees for application processing, examination, registration, certification or licensure and renewal that are sufficient to cover all expenses for the administration and operation of the Department of Health Professions, the Board of Health Professions and the health regulatory boards.*
- 6. To promulgate regulations in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.) which are reasonable and necessary to administer effectively the regulatory system. Such regulations shall not conflict with the purposes and intent of this chapter or of Chapter 1 (§ 54.1-100 et seq.) and Chapter 25 (§ 54.1-2500 et seq.) of this title.*

The **contemplated regulation is mandated by § 54.1-113**; however the board must exercise some discretion in the amount and type of fees that will be increased in order to comply with the statute.

§ 54.1-113. Regulatory boards to adjust fees.--Following the close of any biennium, when the account for any regulatory board within the Department of Professional and Occupational Regulation or the Department of Health Professions maintained under § 54.1-308 or § 54.1-2505 shows expenses allocated to it for the past biennium to be more than ten percent greater or less than moneys collected on behalf of the board, it shall revise the fees levied by it for certification or licensure and renewal thereof so that the fees are sufficient but not excessive to cover expenses.

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 issue to be addressed is the need of the Board of Counseling to increase their fees to cover expenses for essential functions of review of applications, licensing, investigation of complaints against licensees, and adjudication and monitoring of disciplinary cases required for public health and safety in the Commonwealth.

Without adequate revenue to support licensing and discipline functions, applicants cannot be approved for licensure in a timely manner thus depriving the citizens of the Commonwealth with some of the mental health services that are needed. Additionally, if there is a substantial backlog of disciplinary cases, public health and safety may be at risk by allowing practitioners guilty of unprofessional conduct to continue in practice for several months awaiting a review and adjudication of an investigative report.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both.

Renewal fees for the three licensed professions will increase from \$105 to \$130; for the certified professions, the increase will be from \$55 to \$65. Application and initial licensure fees for the licensed professions will increase from \$140 to \$175; for the certified professions, the increase will be from \$90 to \$115. All other fees will be increased by approximately 25%.

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 advantage to the public would be that increased fees will produce adequate revenue to fund the licensing and disciplinary activities of the board. With the shortfall projected in FY21, there could be significant delays in licensing and in the investigation and adjudication of complaints against licensees. There are no disadvantages; increases in renewal fees should not significantly impact the cost of counseling services for Virginians.
- 2) There are no disadvantages to the agency; the advantage would be that fees would be sufficient to cover expenditures, which is a requirement of the Code of Virginia.
- 3) The agency director has performed an analysis of the impact on competition and finds that 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.” Any restraint on competition that results from this regulation is in accordance with the General Assembly’s policy as articulated in § 54.1-100 and is necessary for the preservation of the health, safety, and welfare of the public and will further the public’s need for assurances of quality care.

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 requirements more restrictive than federal.

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.

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.

Changes made since the proposed stage

*Please list all changes that made to the text of the proposed regulation and the rationale for the changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. *Please put an asterisk next to any substantive changes.*

There are no changes.

Public comment

Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate. Please distinguish between comments received on Town Hall versus those made in a public hearing or submitted directly to the agency or board.

There was a public comment period from 8/22/16 to 10/21/16, and a public hearing was conducted on 9/22/16. There was no comment at the hearing, posted on Townhall, or sent to the Board.

All changes made in this regulatory action

Please list all changes that are being proposed and the consequences of the proposed changes. Describe new provisions and/or all changes to existing sections. Explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation

Rationale for the proposed changes:
Currently, direct and allocated expenditures exceed the Board’s revenue. Because it has accumulated a surplus, its expenditures can be funded. However, under the current fee structure, the Board is projected to have a shortfall in its budget by June 30, 2019. Therefore, the Board must begin the regulatory process for increasing its fees.

The Board considered three options: 15%, 25% and 30%. With a 15% increase, the Board would not have sufficient revenue to meet expenditures and still experience a shortfall in FY20, which would increase in coming years. With a 30% increase, the Board would have excess revenue and would likely need to have a fee reduction in coming years. With a 25% increase, the Board revenue is projected to be approximately \$4,000 in excess of expenditures in FY20 and \$15,000 of excess in FY21. An increase of 25% for all fees and license types will provide the Board with adequate funding for the foreseeable future and should avoid the need for increases or reductions in fees.

The impact of the fee increase should not be significant. For LPC’s, MFT’s, and LSATP’s, the annual renewal fee will increase by \$25. For certified professions, the increase will be \$10. With the exception of NC where the renewal fee is similar to VA, licensure renewal fees in neighboring states exceed the proposed increase in Virginia – ranging from \$275 in MD to \$145 in DC. Fees for these professions *have not been increased in over 15 years*. During that time period, there have been *four reductions in renewal fees*.

Chapter 20 – Licensed professional counselor

Current section number	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
20	Sets current fees	Active annual license renewal \$105\$130 Inactive annual license renewal \$55\$65 Initial licensure by examination: Application processing and initial licensure \$140\$175 Initial licensure by endorsement: Application processing and initial licensure \$140\$175 Registration of supervision \$50\$65 Add or change supervisor \$25\$30 Duplicate license \$5\$10 Verification of licensure to another jurisdiction \$25\$30 Late renewal \$35\$45 Reinstatement of a lapsed license \$165\$200 Replacement of or additional wall certificate \$15\$25 Returned check \$35 Reinstatement following revocation or suspension \$500\$600

Chapter 30 – Substance abuse counselor

Current section number	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
30	Sets current fees	Substance abuse counselor annual certification renewal \$55\$65 Substance abuse counseling assistant annual certification

		<p>renewal \$40\$50</p> <p>Substance abuse counselor initial certification by examination:</p> <p>Application processing and initial certification \$90\$115</p> <p>Substance abuse counseling assistant initial certification by examination:</p> <p>Application processing and initial certification \$90\$115</p> <p>Initial certification by endorsement of substance abuse counselors:</p> <p>Application processing and initial certification \$90\$115</p> <p>Registration of supervision \$50\$65</p> <p>Add or change supervisor \$25\$30</p> <p>Duplicate certificate \$5\$10</p> <p>Late renewal \$20\$25</p> <p>Reinstatement of a lapsed certificate \$100\$125</p> <p>Replacement of or additional wall certificate \$15\$25</p> <p>Returned check \$35</p> <p>Reinstatement following revocation or suspension \$500\$600</p>
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Chapter 40 – Rehabilitation counselor

Current section number	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
20	Sets current fees	<p>Initial certification by examination: Processing and initial certification \$90\$115</p> <p>Initial certification by endorsement: Processing and initial certification \$90\$115</p> <p>Certification renewal \$55\$65</p> <p>Duplicate certificate \$5\$10</p> <p>Late renewal \$20\$25</p> <p>Reinstatement of a lapsed certificate \$100\$125</p> <p>Replacement of or additional wall certificate \$15\$25</p> <p>Returned check \$35</p> <p>Reinstatement following revocation or suspension</p>

		\$500\$600
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Chapter 50 – Marriage and family therapist

Current section number	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
20	Sets current fees	Registration of supervision \$50\$65 Add or change supervisor \$25\$30 Initial licensure by examination: Processing and initial licensure \$140\$175 Initial licensure by endorsement: Processing and initial licensure \$140\$175 Active annual license renewal \$105\$130 Inactive annual license renewal \$55\$65 Penalty for late renewal \$35\$45 Reinstatement of a lapsed license \$165\$200 Verification of license to another jurisdiction \$25\$30 Additional or replacement licenses \$5\$10 Additional or replacement wall certificates \$15\$25 Returned check \$35 Reinstatement following revocation or suspension \$500\$600

Chapter 60 – Substance abuse treatment provider

Current section number	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
20	Sets current fees	Registration of supervision \$50\$65 Add or change supervisor \$25\$30 Initial licensure by examination: Processing and initial licensure \$140\$175 Initial licensure by endorsement: Processing and initial licensure \$140\$175 Active annual license renewal \$105\$130 Inactive annual license renewal \$55\$65 Penalty for late renewal \$35\$45 Reinstatement of a lapsed license \$165\$200 Verification of license to another jurisdiction \$25\$30 Additional or replacement licenses \$5\$10 Additional or replacement wall certificates \$15\$25

		Returned check \$35 Reinstatement following revocation or suspension \$500\$600
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