



Proposed Regulation Agency Background Document

Agency name	Board of Social Work, Department of Health Professions
Virginia Administrative Code (VAC) citation	18VAC140-20-10 et seq.
Regulation title	Regulations Governing the Practice of Social Work
Action title	Increase in fees
Date this document prepared	November 2, 2010

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.

Proposed amendments reflect increases in the application and renewal fees, fees charged for late renewal, administrative fees, and reinstatement after disciplinary action. The renewal cycle is changed from biennial to annual, but the verification of continuing education remains on a two-year cycle.

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.

18VAC140-20-10 et seq. Regulations Governing the Practice of Social Work 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 **proposed 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 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.

The issue to be addressed is the need of the Board of Social Work to increase its fees to cover expenses for essential functions of licensing, investigation of complaints against licensees, and adjudication of disciplinary cases to protect the health and safety of clients and patients who receive social work and clinical services in the Commonwealth.

§ 54.1-113 of the *Code of Virginia* requires that at the end of each biennium, an analysis of revenues and expenditures of each regulatory board shall be performed. It is necessary that each board have sufficient revenue to cover its expenditures. In the FY09 fiscal year, the board collected biennial renewal fees, resulting in a balance of \$404,324. However, the combination of income in FY10 and FY11 does not equal the combined expenditures for those fiscal years. At the time the NOIRA was adopted, it was projected that the board may conclude the FY14 fiscal year with a deficit of (\$124,132) and that the board will continue to have deficits through the fiscal years going forward. However, because of extraordinary increases in information technology services, increases in health

care costs, building lease payments and other expenditures, the projected deficit for FY14 is now (\$254,794) and is projected to increase to (\$505,232) without action by the Board.

In FY05 when the contract for information technology services was signed, placing all IT hardware, software and services under a contract with Northrop-Grumman through the Virginia Information Technology Agency (VITA), DHP costs for IT services was \$850,000. In FY11, the cost for those services was \$3.6 million, and it is projected to be \$4.4 in FY12. Since the Department and its boards are under the VITA contract, the agency has no other options for information technology.

Additionally, some of the Department's non-general funds were transferred, in accordance with the Budget Bill of 2010, to the General Fund to help close the gap between revenue and expenditures. The share of that cash transfer allocated to the Board of Social Work was \$11,818. There is a possibility that the General Assembly could opt to require another cash transfer in 2011 and beyond.

Since the fees from licensees no longer generate sufficient funds to pay operating expenses for the board, adoption of a fee increase is essential to continue licensing, investigating and disciplining social workers.

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.)

Amendments reflect an increase in the application and renewal fees, fees charged for late renewal, administrative fees, and reinstatement after disciplinary action. The renewal cycle is changed from biennial to annual, but the verification of continuing education remains on a two-year cycle.

An application and licensure fee will increase from \$100 to \$165 for a licensed clinical social worker, and from \$100 to \$115 for a licensed social worker. Renewal fees will change from \$125 biennially to \$90 annually for a licensed clinical social worker, and from \$110 biennially to \$65 annually for a licensed social worker.

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.

- 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 of (\$254,794) projected in FY14, 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 are mitigated by moving from a biennial to an annual license and should not significantly impact the cost of social work services for Virginians.
- 2) There are no disadvantages to the agency; the advantage would be that fees would be sufficient to cover expenditures, especially significant increases in IT services, which is a requirement of the Code of Virginia.
- 3) There are no additional issues.

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.

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.

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, or by mail to Elaine Yeatts, Agency Regulatory Coordinator, 9960

Mayland Drive, Henrico, VA 23233 or 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) 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>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.</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 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.</p>
<p>Projected cost of the <i>new regulations or changes to existing regulations</i> on localities.</p>	<p>None</p>
<p>Description of the individuals, businesses or other entities likely to be affected by the <i>new regulations or changes to existing regulations</i>.</p>	<p>The entities that are likely to be affected by these regulations would be all persons applying for or maintaining licensure by the Board of Social Work.</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 (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.</p>	<p>The entities affected would be:</p> <ul style="list-style-type: none"> Licensed clinical social worker – 4,967 Licensed social worker – 349 Associate social worker – 2 Registered social worker – 27 <p>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.</p>
<p>All projected costs of the <i>new regulations or</i></p>	<p>Application fees will increase from \$100 to \$165</p>

<p>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.</p>	<p>for a licensed clinical social worker, and from \$100 to \$115 for a licensed social work. Renewal fees will change from \$125 biennially to \$90 annually for a licensed clinical social worker, and from \$110 biennially to \$65 annually for a licensed social worker. Licensees who are late in paying renewal fees will have an increase in the penalty fee from \$10 for all licensees to \$30 for a licensed clinical social worker and \$20 for a licensed social worker. The requirement for maintaining documentation of continuing education decreases from five years following renewal to three years, so there will be a very minimal savings realized.</p>
<p>Beneficial impact the regulation is designed to produce.</p>	<p>Sufficient revenue to pay for the Board’s share of increases costs for IT services and other allocated and direct costs.</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.

While the Board is able to maintain a positive balance at the end of each odd fiscal year, it begins to experience an increasingly large deficit in the even years when it receives a small amount of revenue. To address the unevenness of revenue and to achieve consistency with the other behavioral health practitioners, the Board considered the option of modifying its renewal cycle from biennial to annual.

The Department of Health Professions could consider two possible solutions to the projected deficit of the Board of Social Work; they are as follows:

1. Increase fees through the promulgation of regulations.

As required by law, the board is obligated to establish and collect fees that are necessary to fund operations of the board and the Department. An alternative is to seek the revenue from licensees and applicants to fully fund appropriated expenditures. Costs of services will be paid by consumers who use the services of providers, but licensure fees represent a miniscule percentage of the over-all costs of health care; the increase for clinical social workers would amount to \$27.50 per year. The cost of operation of regulatory boards does not significantly affect the cost or access to health care. However, failure to fully fund the licensing and disciplinary services through fees will have a detrimental affect on quality and availability of care.

2. Reduce department/board operations and staff and remain at current fee level.

In order to prevent deficit spending, the department would need to lay off staff to reduce expenses associated with operations. The net result being a delay in the performance of or the elimination of the following responsibilities:

- **Investigations and discipline**
- **Examinations leading to license**
- **License renewals**
- **Regulation**
- **Approval of new licenses and residencies**

Delays in licensing and investigation could place a vulnerable population in Virginia at risk as clinical practitioners, who are responsible for the mental health and safety of clients in their care and who should not be practicing, would be able continue to practice. Delays in licensing or approval of residencies could also result in an insufficient number of social workers to provide services in communities. It is believed that these consequences would not be acceptable to the administration, the General Assembly, or to the general public.

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.

There are no alternatives to the promulgation of regulations; fees charged to applicants and licensees are set by regulation and cannot be increased without a regulatory process.

Public comment

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

Commenter	Comment	Agency response
Jeanne Kadet, LCSW, LSATP	Concern with adding expenses (mailings, administrative time, etc.) with doing an annual renewal. Increasing our fees is like adding a tax to us. This makes it hard for some of us who are in private practice, running a small business in a challenging economy. It seems there should be more focus on	There are very minimal costs associated with an annual versus a biennial renewal, since renewals are generally handled electronically. By 2013, all boards will notify electronically, use electronic applications and renewal electronically. Unfortunately, the creative efforts of the Department of Health Professions to reduce costs are overshadowed by very, very significant increases in costs for IT

	creative ways to reduce our expenses and not add to them	services from VITA – those charges are not related to improvements in services or equipment, but are mandated by a contract signed for privatization of IT services to Northrop-Grumman.
Philip Cerrato, LCSW	Inquiry about why the current fee schedule and amount were being changed and whether the increases are clinically driven or because the state needs more funds.	Responses to the commenter’s question are found in this agency background document. The increase is not likely to result in any improvement in services but is essential to avoid a significant diminution in services.
Eleanor Ware, LCSW	If the fee increase is necessary to cover the costs of moving from a biennial to an annual renewal, is not in favor. The biennial system is efficient and effective.	The costs are not related to the change from biennial to annual; in fact, the change is likely to produce a very modest increase in revenue.
Lisa Snipper, LCSW	Opposed to increase in fees and change to annual renewal as costs of private practice have increased. Unethical to ask social workers to pay more money in order to provide a much needed service in Virginia.	Since the Department and the Board are non-general fund agencies, there is no option but to generate sufficient revenue to pay expenditures through fees charged to licensees.
Jean Senseman, LCSW	Opposed to a fee increase unless policy in place to charge depending on whether practice is part-time or full-time	Such a system would be completely unmanageable. Budgeting would be chaotic; notification of fees would be individualized and therefore extremely expensive.
Linda Johnson, LCSW	Opposed to annual renewal; biennial allows more time to get the training required to maintain the license.	The continuing competency requirement is not being amended; it remains a biennial requirement.

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.

The proposed regulatory action would not strengthen or erode the authority and rights of parents, encourage or discourage economic self-sufficiency, or strengthen or erode the marital commitment. There could be a very modest decrease in disposable family income for licensees depending on the license held; for a licensed clinical social worker, the increase in renewal would equal \$27.50 per year, and for a licensed social worker, the increase would equal \$10 per year.

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.

Current section number	Current requirement	Proposed change, rationale, and consequences
30	Establishes all fees charged to applicants and licensees	<p>In subsection A, the following changes are proposed:</p> <ol style="list-style-type: none"> 1. Registration of supervision - \$25 <u>50</u> <u>Add/change of supervision - \$25</u> <p><i>The process of registration of supervision is complex with requirements for checking the eligibility of the registrant and qualifications of the supervisor. Currently, the same fee is charged for initial registration and for any change or additional supervisor. In the proposed regulation, the fees would be proportional to the amount of staff/board time involved in approval of supervision.</i></p> <ol style="list-style-type: none"> 2. Application processing <u>Licensed clinical social worker - \$100</u> <u>165</u> <u>Licensed social worker - \$100</u> <u>115</u> <p><i>According to Principles for Fee Development, adopted by the Department in 1999, an application fee should cover the cost of credentials review and the initial licensure. A newly licensed social worker would not be required to renew his license for at least one year. Since the application fee includes a year of licensure for a licensed clinical social worker, the remaining \$75 covers all costs relating to collection of documentation, review of application packages, responding to applicant calls and emails and, for the non-routine applications, a hearing before a credential committee.</i></p> <ol style="list-style-type: none"> 3. Biennial <u>Annual</u> license renewal <ol style="list-style-type: none"> a. Registered social worker - \$35 <u>25</u> b. Associate social worker - \$35 <u>25</u> c. Licensed social worker - \$110 <u>65</u> d. Licensed clinical social worker - \$125 <u>90</u> <p><i>The Board proposes changing from a biennial renewal to an annual renewal. Revenue is more predictable and steadier. Generally revenue from an annual renewal is expected to be slightly higher than a biennial renewal because the Board may derive revenue from persons on an annual basis who would have retired, moved away or changed professions by the time a biennial renewal is due. An annual renewal is easier for licensees to remember and less burdensome in terms of cost. It is also consistent with counseling and psychology, as well as most other health regulatory boards. Annual renewals typically ensure more accurate address and emails, since most licensees update personal information at the time of renewal. Since most of the renewal process is automated, the cost of annual renewals versus biennial renewal is</i></p>

		<p><i>minimal and is more than offset by increased revenue. For a licensed clinical social worker, the increase in renewal would equal \$27.50 per year, and for a licensed social worker, the increase would equal \$10 per year</i></p> <p>4. Penalty for late renewal - \$10</p> <p>a. <u>Registered social worker \$10</u></p> <p>b. <u>Associate social worker \$10</u></p> <p>c. <u>Licensed social worker \$20</u></p> <p>d. <u>Licensed clinical social worker \$30</u></p> <p><i>Currently, the late fee is \$10, regardless of the type of license or renewal fee owed. Fee Principles for the Department state that a late fee should be approximately 1/3 of the renewal fee, so the proposed fees are proportional depending on the type of license.</i></p> <p>5. Verification of license to another jurisdiction - \$10 <u>25</u></p> <p>6. Additional or replacement licenses - \$10 <u>15</u></p> <p>7. Additional or replacement wall certificates - \$15 <u>25</u></p> <p><i>Fees for verification of license, replacement of licenses or wall certificates should be based on administrative costs for performing such functions and should be relatively consistent across boards. The current fees for Social Work were inconsistently low and insufficient to cover the costs for those functions.</i></p> <p>9. Reinstatement following disciplinary action - \$200 <u>500</u></p> <p><i>In order to reinstate a license that has been suspended or revoked, it is necessary to conduct an investigation of the practitioner to determine whether he has practiced during that time and whether he is ready to resume safe, ethical practice. The cost for that investigation should be largely borne by the practitioner seeking to have his license restored.</i></p>
100	Sets out requirements and schedule for licensure renewal	<p>Subsection A is amended to eliminate the odd year renewal and change to an annual renewal.</p> <p><i>A discussion of annual versus biennial renewal is stated above. Since licensees who renewed by June 30, 2011 have paid for a biennial renewal, the change to an annual renewal with the increased fee would become effective for the 2013 renewal.</i></p>
105	Sets out requirements for continuing competency of licensees	<p>Subsection A is amended to require completion of the same number of hours as currently required for biennial renewal. Verification of completion will only be requested in even years.</p>
106	Sets requirements for compliance with continuing education	<p>Subsection A currently requires all licensees in active status to maintain original documentation of CE for a period of five years following renewal. That requirement is modified to three years.</p> <p>In subsection B, the requirement for a random audit is modified to</p>

		<p>provide authorization for an audit.</p> <p><i>Following renewal in the even years, the Board would have the option of conducting a random audit of the past two years of CE. Three- year maintenance of documentation should be sufficient. Depending on budget considerations, the Board may choose not to do a random audit after one cycle, or the Board may choose to audit only those licensees who have been found in violation of law and regulation in the past two years.</i></p>
110	Sets out requirements for late renewal and reinstatement	<p>Subsection A is amended to set a late renewal for one year after expiration versus the current rule of four years after expiration. Language is also amended for consistency with an annual renewal.</p> <p><i>Fee Principles for the Department set the policy for late renewal to be renewal within one renewal cycle; therefore, regulations are amended to allow late renewal of social workers for one year after the expiration date. After that period, a person must reinstate his license.</i></p> <p>Subsection B is amended to establish the composition of the reinstatement fee (which is not stated in the fee section) as the application processing fee plus the late fee.</p> <p>Subsection C corrects an omission in which the category of “clinical social worker” was not specified.</p>
150	Sets the renewal of registered and associate social workers	<p>The two categories of social work regulation in section 150 are no longer offered, but persons who held the titles of registered social worker and associate social worker are allowed to renew. The regulation is changed for consistency with annual renewal.</p>