



Final Regulation Agency Background Document

Agency name	Board of Social Work, Department of Health Professions
Virginia Administrative Code (VAC) citation	18 VAC 140-20-10 et seq.
Regulation title	Regulations Governing the Practice of Social Work
Action title	Licensure requirements
Date this document prepared	11/30/12

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

Please provide a brief summary (no more than 2 short 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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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. Also, please include a brief description of changes to the regulation from publication of the proposed regulation to the final regulation.

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

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 or board taking the action, and (3) the title of the regulation.

On November 30, 2012, the Board of Social Work amended 18VAC140-20-10 et seq., 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 determine the qualifications for licensure and reinstatement and to promulgate regulations to administer the regulatory system:

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

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

- 1. To establish the qualifications for registration, certification, licensure or the issuance of a multistate licensure privilege in accordance with the applicable law which are necessary to ensure competence and integrity to engage in the regulated professions.*
- 2. To examine or cause to be examined applicants for certification or licensure. Unless otherwise required by law, examinations shall be administered in writing or shall be a demonstration of manual skills.*
- 3. To register, certify, license or issue a multistate licensure privilege to qualified applicants as practitioners of the particular profession or professions regulated by such board.*
- 4. To establish schedules for renewals of registration, certification, licensure, and the issuance of a multistate licensure privilege.*
- 5. To levy and collect fees for application processing, examination, registration, certification or licensure or the issuance of a multistate licensure privilege and renewal that are sufficient to cover all expenses for the administration and operation of the Department of Health Professions, the Board of Health Professions and the health regulatory boards.*

6. To promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) which are reasonable and necessary to administer effectively the regulatory system. Such regulations shall not conflict with the purposes and intent of this chapter or of Chapter 1 (§ 54.1-100 et seq.) and Chapter 25 (§ 54.1-2500 et seq.) of this title.

Purpose

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

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

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

By accepting active, unrestricted practice in other states as evidence of current competency to practice, the Board may expand the applicant pool for licensure as clinical social workers to meet the growing need for mental health providers while protecting the health, safety and welfare of the public such providers serve.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the “All changes made in this regulatory action” section.

Enter statement here

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.*

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

- Amend Regulation 18VAC140-20-40 and 18VAC140-20-51 to address the problem of applicants who passed the examination a number of years prior to application but were never licensed in Virginia or in another jurisdiction. The amendment would require that the national licensing examination be passed within five years prior to application or, if the examination was passed before that time period, that the applicant demonstrate evidence of social work practice at the appropriate level (social worker or clinical social worker) within an exempt setting prior to application.
- Amend Regulation 18VAC140-20-45 to eliminate certain application requirements for licensure by endorsement applicants and, at the same time, to clarify the meaning of “active practice” to demonstrate competency in the field of social work. Currently, regulations require an applicant for licensure by endorsement to have actively practiced for 36 of the past 60 months; amended regulation would provide an alternative of supervised experience equivalent to that required for licensure by examination.
- Amend Regulation 18VAC140-20-110 to address the issue of reactivation and reinstatement for applicants who have either been not practicing social work in recent years or practicing elsewhere in an exempt setting by requiring practice under supervision for at least 360 hours in the 12 months preceding licensure in Virginia.

Changes made since the proposed stage

Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar’s office, please put an asterisk next to any substantive changes.

Section number	Requirement at proposed stage	What has changed	Rationale for change
110 B & C	Alternative for reinstatement or reactivation of practice as a “resident” under supervision in lieu of active	The term “resident” was changed to “supervisee.”	In response to comment, the Board edited the term since “resident” is not used elsewhere in regulation.

	practice within the past five years		
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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.

Commenter	Comment	Agency response
Lisa Lervolino	The regulation for reactivation or reinstatement requires 360 hours of supervised practice within the past 12 months if an applicant has not held an active license in Virginia for four or more years and has not been actively practicing in another jurisdiction or in an exempt setting. The commenter felt the supervised practice requirement was too burdensome and should be amended to allow re-licensure with consultation or supervision of practice for the first 3 months or 360 hours.	The Board has no authority to issue a conditional license, which is what the commenter is requesting. Once a full and unrestricted license is issued, the licensed clinical social worker may practice independently. By requiring supervised practice <i>prior</i> to issuance of an active license, the Board has some assurance that the applicant for re-licensure (who has not held an active license as a clinical social worker for four or more years) has the skills and competency to resume practice.
Joseph Lynch, Va. Society for Clinical Social Work	In support of the proposed regulations, but requested that the term “resident” be changed because it is not defined or used in regulation.	The Board concurred with the request and amended the term in section 110.
National Association of Social Workers, Va. Chapter (NASW)	In support of the proposed regulations	The Board concurred.

In addition to the comment received during the 60-day comment period, the Board considered a request from a petition for rulemaking as comment on the proposed regulations. The petitioner requested to amend Section 45 of the regulations for licensure by endorsement to allow social workers from other jurisdictions to provide "verification of active practice in another jurisdiction for 36 out of the past 60 months;" or verification of active practice in another jurisdiction for 36 months at any time, plus verification that the applicant has completed 30 contact hours of continuing education in the 12 months preceding the application for licensure. The NASW

supported an alternative that would allow licensure with verification of active practice for 36 months in the past 10 years, plus continuing education.

A motion was made by one board member to support the change but it was never seconded. Board members felt that it was not in the best interest for public safety for an applicant who had potentially not practiced for seven or more years to resume independent practice without re-examination.

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.

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

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

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