THE VIRGINIA BOARD OF SOCIAL WORK
PUBLIC HEARING MINUTES
Friday, December 5, 2014

The Virginia Board of Social Work ("Board") meeting convened for a Public Hearing at 10:02 a.m. on Friday, December 5, 2014 at the Department of Health Professions, 9960 Mayland Drive, Richmond, Virginia. Jennifer Blosser, Chair called the meeting to order.

BOARD MEMBERS PRESENT: Jennifer Blosser
Maria Eugenia del Villar
Yvonne Haynes
Dolores Paulson
Nettie Simon-Owens
Bernadette Winters
Kristi Wooten

DHP STAFF PRESENT: Catherine Chappell, Executive Director
Sarah Georgen, Licensing Manager
Charlotte Lenart, Licensing Specialist
James Rutkowski, Board Counsel
Elaine Yeatts, Senior Policy Analyst

OTHERS PRESENT: Joseph Lynch, Virginia Society for Clinical Social Work
Katie Hellebush, Vice President – Government Affiars, Alliance Group, on behalf of the National Association of Social Workers – Virginia Chapter

WELCOME

Ms. Blosser stated that the public hearing was being held to receive comments on proposed regulations for a fee increase and to change the renewal of licensure from biennial period to an annual period. Copies of the proposed regulations were provided for the public.

PUBLIC COMMENT

Mr. Lynch provided public comment (attachment no. 1). Ms. Hellebush provided public comment (attachment no. 2).

CLOSING STATEMENTS

Ms. Blosser closed the meeting by stating that written comments on the proposed action should be directed to Elaine Yeatts, Senior Policy Analyst, Board of Social Work, Perimeter Center, 9960 Mayland Drive, Suite 300, Henrico, VA 23233-1463 or by email to Elaine.Yeatts@dhp.virginia.gov. She also stated that electronic comment could be posted to the Virginia Regulatory Town Hall at www.townhall.virginia.gov. Ms. Blosser stated that the comment period will close on January 30, 2015.

ADJOURNMENT

The public hearing was adjourned at 10:11 a.m.

Jennifer Blosser, Chair

12-21-14
Date

Catherine Chappell, Executive Director

1-5-15
Date

Attachment No. 1

Virginia Society for Clinical Social Work

Joseph G. Lynch LCSW, CSOTP

December 5, 2014

Public Comment to the Virginia Board of Social Work

1. Proposed Regulation to Increase fees and shift to annual renewal:

The VSCSW understands that the VBSW proposed change in regulations to increase fees is primarily in response to the board complying with the Code of Virginia §54.1-113. The proposal to change to an annual renewal makes sense in terms of managing cash flow for the operation of the board's activities.

In reviewing the "Agency Background Document" regarding the proposed regulatory changes it is clear that there were two factors that impacted the expenses of the board.

- The first was the Northrop-Grumman contract through the Virginia Information Technology Agency that has caused IT cost to go from $850,000 in FY2005 to 4.4 million in FY 2012.
- The second was the Budget Bill of 2010 that allowed $11,818 that was collected by the VBSW as licensing fees to be transferred to the General Fund of the Commonwealth.

Neither of these two expenses was under the control of the VBSW.

I am particularly disturbed by the transfer of licensing fee monies to the General Fund. To me this amounts to a "back-door" taxation on licensed health care providers. §54.1-2400 specifically states that health regulatory boards have authority to "levy and collect fees that are sufficient to cover all expenses for the administration and operation" of the boards. Those licensing fee dollars are dedicated money for the purpose of the board operations. I strongly encourage the VBSW to voice to the Governor the board's opposition to the transferring of these dedicated monies to the general fund.

Another aspect of the proposed regulation that I found very disturbing has to do with the process. By my calculations the time from the filing of the "Notice of Intended Regulatory Action (NORIA)" by the VBSW (April 16, 2010) to the approval by the Governor was **1668 days**. As a former member and chair of the VBSW I can't recall any VBSW proposed regulation taking that amount of time to get to this point in the regulatory process. Most of that delay occurred due to Governor McDonnell not taking any action on the proposed regulation while he was in office. I find it very unfortunate that the attempt by the VBSW to comply with 54.1-133 and be fiscally responsible was delayed for such a long time.

2. Public comments that were submitted to the VBSW for the July 18, 2014 board meeting that was canceled.

1. Attached is public comment concerning the part of the VBSW regulations that require:

18VAC140-20-50. Experience requirements for a licensed clinical social worker. A.2.

b. Supervisees <u>shall average no less than 15 hours per 40 hours</u> of work experience in face-to-face client contact for a minimum of 1,380 hours. The remaining hours may be spent in ancillary services supporting the delivery of clinical social work services.

Newly graduated MSW's who are employed at entry level positions and are using that experience towards their LCSW supervised experience may have very little control over the number of hours of "face-to-face" client contact they are assigned to provide to clients for each 40 hours of work. The employer is most likely making that determination. It seems that if the MSW submits all of the 40 hours of work experience during a two year period they are unlikely to meet the standard of "no less than 15 hours per 40 hours".

In my written comments I present an example of a way an MSW applicant can submit only those 40 hours of work experience segments that have no less than 15 hours of face-to-face client contact. I believe they would be in compliance with the VBSW regulations to not submit weeks that had less than 15 hours of face-to-face client contact.

Given the report from the "Healthcare Workforce Data Center" that notes that nearly 30% of the LCSW workforce is expected to retire in the next 10 years it seems important for the VBSW to encourage MSW's to fill out their applications in such a manner as I have described so they will get through the application process more quickly.

3. June 26, 2014 letter to VBSW Chair Susan Horne-Quatannens:

I wanted to bring to the boards attention that when the opportunity occurs to conduct periodic review of the boards regulations as require by §2.2-4017 that the board consider two areas of the regulations that causes confusion.

- The first area is that the regulations actually use 5 different terms for "experience." When the opportunity presents itself it would be helpful for the board to assign one term for "experience" and use that term consistently in the regulations.
- The second area is "in the delivery of clinical social work services". It appears that the regulations are inferring that "clinical social work services" has two components:
  - The first component is "face-to-face" client contact hours.
  - The second component is "ancillary services"

These two components must total 3000 hours. The regulations state that the face-to-face component must have a "minimum of 1,380 hours". The "remaining" 1620 hours are spent delivering "ancillary services" that are "...supporting the delivery of clinical social work services" (18VAC140-20-50. Experience requirements for a licensed clinical social worker. A.2.b)

The problem arises in the wording and definitions. The regulations have definitions for "clinical social work services" and for "ancillary services" as noted below:

> *"Ancillary services" means activities such as case management, recordkeeping, referral, and coordination of services.*
>
> *"Clinical social work services" include the application of social work principles and methods in performing assessments and diagnoses based on a recognized manual of mental and emotional disorders or recognized system of problem definition, preventive and early intervention services and treatment services, including but not limited to psychotherapy and counseling for mental disorders, substance abuse, marriage and family dysfunction, and problems caused by social and psychological stress or health impairment.*

"Ancillary services" are not included in the definition of "Clinical social work services". For that matter "face-to-face client contact" is also not included in the definition of Clinical social work services. In one part of the regulations "ancillary services" are "supporting the delivery of clinical social work services" so they are therefore not actually clinical social work services. In another part of the regulations the applicant needs "a minimum of 3000 hours ...in the delivery of clinical social work services". But if it is not clearly defined in the regulations that the 3000 hours include two components "face-to-face" client contact and "ancillary services"

then it leaves the applicant to infer and draw conclusions as to what the regulations mean. It would just be helpful for the Board to make the definitions very clear about the two components of clinical social work services.

4. Should the VBSW have any regulations about LCSW's creating a "Professional Will"?

In Charlottesville VA in 2014 there was a licensed mental health provider who committed suicide. This death brought attention to concerns about mental health practitioners creating a "Professional Will." It is a fact that all LCSW's at some point in time will die. If the LCSW is in active practice when they die then the question arises "Did they prepare a "Professional Will" to deal with the issues that arise for their clients at the time of the professional's death?"

I began to explore this issue a bit and found professional literature that strongly recommended that each mental health provider develop a professional will and provides information on what areas need to be addressed and some gave sample Professional Will forms.

I found some state regulatory boards have developed regulations around the issue of a mental health provider being required to take steps that will address issues of client records, confidentiality, and client's being referred to other mental health providers for care in the event of a provider's death.

I brought with me a packet of materials for the board about this topic. The VSCSW recommends to the VBSW that they consider a study (perhaps in collaboration with the Boards of Psychology and Counseling) to explore if there is any need for the development of regulations dealing with licensed mental health providers taking steps to prepare for their clients' needs upon the provider's death.

VSCSW, 10106-C Palace Way
Henrico VA 23238

December 5, 2014

All LCSW's, LCP's and LPC's will die.
We don't know when but we do know that death is a foreseeable outcome

When we know that an outcome is foreseeable and that it may have harmful consequences to our clients then part of our professional fiduciary duty is to take steps to mitigate the harm to our clients. Our death is a foreseeable outcome for each of us. There are several "harms" that can happen to our clients:

- Clinical issues are not being treated
- New issues of dealing with loss, sense of abandonment and confusion about what next steps to take to deal with treatment.
- What will happen to my records?
- Who do I contact with any questions I have about my records or treatment?

The professional literature has noted this issue and made suggestions that a responsible action to take is to develop a "Professional Will" (See Frederick Reamer "Eye on Ethics" August 2013 and American Psychological Association "Professional Will: A Responsible Thing To Do, February 2003, Vol 34, No. 2).

Reamer notes that this issue is addressed in the NASW Code of Ethics as follows:

"Social workers should make reasonable efforts to ensure continuity of services in the event that services are interrupted by factors such as unavailability, relocation, illness, disability, or death" (standard 1.15).

Also several states have enacted legislation or administrative regulations that address the issues that arise when there is the death of a therapist. For example Florida regulations state:

64B19-19.004 Disposition of Records Upon Termination or Relocation of Psychological Practice.

(1) "When a licensed psychologist terminates practice or relocates practice and is no longer available to service users in the practice area, the licensed psychologist shall provide notice of such termination or relocation of practice...."

(2) "The executor, administrator, personal representative or survivor of a deceased licensed psychologist shall ensure the retention of psychological records in existence upon the death of the psychologist for a period of at least two (2) years and two (2) months from the date of the licensed psychologist's death...."

Specific Authority 456.058, 490.004(4) FS. Law Implemented 456.058 FS. History–New 8-12-90, Formerly 21U-22.004, Amended 6-14-94, Formerly 61F13-22.004, 59AA-19.004, Amended 9-18-97.

The Oregon Board of Psychologist Examiners, Administrative Rules Chapter 858 state:

858-010-0060 Psychological Records

(3) Oregon licensees shall name a qualified person to intercede for client welfare and to make necessary referrals, when appropriate, and shall keep the Board notified of the name of the qualified person. The Board shall not release the name of the qualified person except in the case of the death or incapacilty of the licensee or if the licensee is inactive or has resigned and the former client is unabl to locate the licensee.

(4) A "qualified person" under this rule means an acive or semi-active Oregon licensed psychologist.

The Oregon Board provides:

- *Quality Person Designation Form*
- *Guidelines for preparing your Professional Will*
- *A sample professional will*
- *PRID Executor Checklist*

The New York Office of the Professions published "When Practice ceases-Temporarily or Permanently" that highlights regulatory requirements concerning:

- Patient Confidentiality
- Patient/client Records
- Confidentiality and the Transfer of Recods
- Patient/client Abandonment

RECOMMENDATION:

The VSCSW ask that the Virginia Board of Social Work (possibly in collobration with the Board of Counseling and Board of Psychology) consider a study to explore the need to develop regulations addressing the need to protect Virginia citizens by requiring Licensed Behavioral Helath Professionals to develop a 'Professional Will."

(SEE ATTACHMENTS FOR REFERENCE)

Attachment No. 2

NASW-VA Comment re: Licensure Renewal and Fee Increase

Virginia Board of Social Work

December 5, 2014

BACKGROUND

Hello and good afternoon M. Chair and members of the board. My name is Katie Hellebush. And I am here representing NASW- VA.

Founded in 1955 the National Association of Social Workers (NASW) is the largest organization of professional social workers in the world, with over 130,000 members in 55 chapters. The Virginia Chapter, with approximately 3,000 members, is the major professional social work organization in the state. NASW is committed to advancing professional social work practice and the profession; and to promoting human rights, social and economic justice, and unimpeded access to services for everyone. Its members work in a broad range of settings including hospitals and other health care settings, community agencies, government, academia, business, nursing homes, schools, and private practice.

ISSUE

The 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.**

An application and licensure fee will increase from:
$100 to $165 for a licensed clinical social worker
$100 to $115 for a licensed social worker

Renewal fees will change from:
$125 biennially to $90 annually for a licensed clinical social worker
$110 biennially to $65 annually for a licensed social worker

COMMENTS

Our first question is why. What is the reasoning and data that clearly supports both a change in renewal cycle and an increase in licensure and renewal fees?

Clearly NASW-VA supports policy that encourages and promotes a licensed workforce and wishes to encourage those who are entering the field to become licensed and to stay licensed.

Not only do responses from a recent membership survey regarding this proposal clearly show strong opposition and objections to the proposed fee increase and change of renewal cycle, but the responses include a concern that an increase in fees will be especially burdensome to those entering the workforce. In fact 85% of those who participated in the survey responded that they oppose the fee increase as well as the change to renewing every year.

As business owners, practitioners and providers of critical services to the public, we urge you to reconsider the need to change the frequency of renewals. While we appreciate that the period to verify continuing education credits remains the same, we offer that changing one without the other will be confusing especially the first years of implementation.

Similarly – any increase in fees should be implemented gradually over time to allow workers to absorb these increased costs since they are in addition to the continuing education credits that they are committed to and required to receive.

Licensure is essential and in no way do we want to encourage a policy which will result in unintended consequences and be detrimental to essential social services work

Therefore on behalf of NASW – VA and its approximately 3,000 members serving in hospitals and other health care settings, community agencies, government, academia, business, nursing homes, schools, and private practice, I urge you to reconsider the proposal, to consider seriously the impact of these licensure costs and renewal costs to practitioners around the Commonwealth and to revise the proposal and come back with a proposal with the least financial impact and administrative burden to those licensed and those looking to become licensed.

I am happy to take your questions and I thank you for this opportunity to provide comment.