

Regulatory Analysis Form

(Completed by Promulgating Agency)

INDEPENDENT REGULATORY
REVIEW COMMISSION

(All Comments submitted on this regulation will appear on IRRRC's website)

(1) Agency

Department of State, Bureau of Professional and Occupational Affairs, State Board of Social Workers, Marriage and Family Therapists and Professional Counselors

(2) Agency Number: 16A

Identification Number: 6920

IRRC Number: 2983

(3) PA Code Cite: 49 Pa. Code § 47.4

(4) Short Title: Biennial Renewal Fees

(5) Agency Contacts (List Telephone Number and Email Address):

Primary Contact: Cynthia K. Montgomery, Regulatory Counsel, Department of State, P.O. Box 2649, Harrisburg, PA 1105-2649 (phone 717-783-7200) (fax 787-0251) cymontgome@pa.gov.

Secondary Contact: Beth Michlovitz, Counsel, State Board of Social Workers, Marriage and Family Therapists and Professional Counselors, P.O. Box 2649, Harrisburg, PA 17105-2649 (phone 717-783-7200) (fax 787-0251) bmichlovit@pa.gov.

(6) Type of Rulemaking (check applicable box):

- Proposed Regulation
 FINAL REGULATION
 Final Omitted Regulation

- Emergency Certification Regulation;
 Certification by the Governor
 Certification by the Attorney General

(7) Briefly explain the regulation in clear and nontechnical language. (100 words or less)

The final regulation amends § 47.4 (relating to licensure fees) to increase the biennial renewal fee for all classes of license (licensed social workers, licensed clinical social workers, licensed marriage and family therapists and licensed professional counselors) from \$75 to \$95.

(8) State the statutory authority for the regulation. Include specific statutory citation.

Section 18 (c) of the Social Workers, Marriage and Family Therapists and Professional Counselors Act (act) (63 P.S. § 1918(c)) requires the Board to increase fees by regulation to meet or exceed projected expenditures if the revenues raised by fees, fines and civil penalties are not sufficient to meet expenditures over a 2-year period.

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(9) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as, any deadlines for action.

Except as set forth in paragraph (8), the regulation is not mandated by any federal or state law or court order or federal regulation.

(10) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

Under section 18(c) of the act, the Board is required by law to support its operations from the revenue it generates from fees, fines and civil penalties. In addition, the act provides that the Board must increase fees if the revenue raised by fees, fines and civil penalties is not sufficient to meet expenditures over a 2-year period. The Board raises the majority of its revenue through biennial renewal fees. A small percentage of its revenue comes from application fees and civil penalties.

The Board's current biennial license renewal fees were last increased in 2008 (See 38 Pa.B. 4509), effective with the 2009 biennial renewal. At that time, it was anticipated that the increase would be sufficient to carry the board for at least 9 years. However, at the February 2, 2012, Board meeting, representatives from the Department of State's Bureau of Finance and Operations (BFO) presented a summary of the Board's revenue and expenses for fiscal years 2009-2010 and 2010-2011, and projected revenue and expenses through 2014-2015. BFO pointed out that as of June 2010, in spite of the increase, the Board still had a deficit of \$31,505.87. BFO advised the Board that at the current renewal fee level of \$75, the Board produces approximately \$1,350,000 in revenue in a given 2-year period, while expenditures for the past 2-year period equaled more than \$1,420,000. BFO projected that, without an increase to the biennial renewal fees, the Board will incur a deficit of approximately \$209,434 in fiscal year 2011-2012, and a deficit of approximately \$556,434 by fiscal year 2013-2014, necessitating a fee increase. Therefore, the Board determined that it was necessary to raise fees to meet or exceed projected expenditures, in compliance with section 18(c) of the act. As a result, the Board voted at its March 13, 2012 meeting to increase the biennial renewal fees to \$115.

Subsequently, the Board published proposed rulemaking to accomplish this \$40 increase effective with the 2015 biennial renewals on March 9, 2013. After receiving numerous public comments, and comments from the House Professional Licensure Committee (HPLC) and the Independent Regulatory Review Commission (IRRC), the Board asked BFO to provide an updated financial picture as it has now been over a year since BFO's original summary. Two changes in the Board's current financial condition were noted. First, the number of active licensees has increased by nearly 1,000 since the proposed increase. Second, the Board has been able to reduce expenditures below the projections of a year ago, such that projected deficits have been reduced, although not eliminated. For example, when the Board approved the increase in March of 2012, BFO projected a negative fund balance at the end of fiscal year 2011 – 2012 of approximately (\$209,350). However, the actual balance at the end of that year come in at (\$67,197.40). So, although the situation still necessitates a fee increase, things are not as bleak as it appeared a year ago.

For these reasons, the Board voted at its meeting of July 9, 2012, to promulgate this final-form rulemaking to include a fee increase from \$75 to \$95, as opposed to \$115. The new biennial renewal fee will enable the Board to recoup the projected deficits and meet its estimated expenditures for a number of years to come.

(11) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulations.

There are no federal standards applicable to the subject matter of the regulation.

(12) How does this regulation compare with those of the other states? How will this affect Pennsylvania's ability to compete with other states?

Attached is a chart that compares the renewal fees of surrounding states, which range from \$60 to \$225. Based on this information, the Board believes the proposed \$95 biennial renewal fee will not put Pennsylvania at a competitive disadvantage.

(13) Will the regulation affect any other regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

No.

(14) Describe the communications with and solicitation of input from the public, any advisory council/group, small businesses and groups representing small businesses in the development and drafting of the regulation. List the specific persons and/or groups who were involved. ("Small business" is defined in Section 3 of the Regulatory Review Act, Act 76 of 2012.)

Because an increase in the biennial renewal fee is mandated by section 18 (c) of the act, pre-draft input was not solicited. However, the proposal was discussed at public meetings of the Board on December 13, 2011, February 14, 2012, March 13, 2012, April 10, 2012, June 11, 2013, and July 9, 2013, which were routinely attended by professional associations who represent the regulated community and other organizations who have an interest in the regulatory agenda of the Board. The Board also shared drafts with and considered input from the National Association of Social Workers – Pennsylvania Chapter (NASW-PA). In addition, the Board invited the professional organizations that represent the regulated community to submit comments following publication of the notice of proposed rulemaking. The Board received comments from the NASW-PA and the Pennsylvania Society for Clinical Social Work (PSCSW), and 16 individual licensed social workers/licensed clinical social workers. The Board considered all of their comments in drafting the final rulemaking.

(15) Identify the types and number of persons, businesses, small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012) and organizations which will be affected by the regulation. How are they affected?

At present there are approximately 7,296 licensed social workers, 4,997 licensed clinical social workers, 508 licensed marriage and family therapists, and 5,142 licensed professional counselors, for a total of 17,943 individuals licensed by the Board. These licensees will be directly affected in that they will be required to pay an additional \$20 each time they renew their licenses beginning in 2015.

According to the Pennsylvania Department of Labor and Industry in 2010 (the most recent year for which data is available), social workers, marriage and family therapists and professional counselors provide their services for a variety of private and public sector employers. Excluding those who work for local and state governments and in elementary and secondary schools, licensees are employed in the following private sector positions (listed in alphabetical order): child day care services, colleges and universities, community care facilities for the elderly, emergency and other relief services, general medical and surgical hospitals, home health care services, individual and family services, nursing care facilities, offices of other health care practitioners, other residential care facilities, outpatient care centers, psychiatric and substance abuse hospitals, residential mental health facilities, vocational rehabilitation services, while a small minority are self-employed.

Small businesses are defined in Section 3 of the Regulatory Review Act, (71 P.S. § 745.3) which provides that a small business is defined by the SBA's Small Business Size Regulations under 13 CFR Ch. 1 Part 121. These size standards have been established for types of businesses under the North American Industry Classification System (NAICS). In applying the NAICS standards to the types of businesses where licensees may work, a small business in Subsector 624 (Social Assistance), Subsector 623 (Nursing and Residential Care Facilities) or Subsector 621 (Ambulatory Health Care Services) is one that has \$7.0 million or less in average annual receipts. (These would include those that work for child and youth services, services for the elderly and persons with disabilities, other individual and family services, emergency and other relief services and child day care services, residential mental health and substance abuse facilities, homes for the elderly and other residential care facilities, offices of mental health practitioners and offices of all other miscellaneous health care practitioners. For those licensees who are employed in outpatient mental health and substance abuse centers (# 621420), the small business threshold is \$10.0 million or less in average annual receipts. Those licensees in home health care services (# 621610) and nursing care facilities (# 623110) have a small business threshold of \$13.5 million or less in average annual receipts. Finally, licensees employed in general medical and surgical hospitals (# 622110) or in psychiatric and substance abuse hospitals (# 622210) have a small business threshold of \$34.5 million or less in average annual receipts. Based on this variety of employers, the Board believes that most social workers and marriage and family therapists in Pennsylvania are employed in small businesses. The Board does not collect information on the size of the businesses where its licensees are employed.

However, according to the Small Business Administration (SBA), there are approximately 982,692 businesses in Pennsylvania; of which 978,831 are small businesses; and 3,861 are large businesses. Of the 978,831 small businesses, 236,775 are small employers (those with fewer than 500 employees) and the remaining 772,056 are non-employers. Thus, the vast majority of businesses in Pennsylvania are considered small businesses. Therefore, for purposes of determining the

economic impact on small businesses, the Board must assume that a large number of its licensees work for small businesses as that term is defined by the SBA and Pennsylvania's Regulatory Review Act.

Although many licensees probably work for "small businesses," whether these businesses will be adversely affected by the increase in the biennial renewal fee depends on whether the employer elects to pay the biennial renewal fees on behalf of its licensed employees. Some companies may do so, others may not. A company could avoid the adverse effect by simply requiring its employees to pay their own licensure fees.

(16) List the persons, groups or entities, including small businesses, that will be required to comply with the regulation. Approximate the number that will be required to comply.

The 7,296 licensed social workers, 4,997 licensed clinical social workers, 508 licensed marriage and family therapists, and 5,142 licensed professional counselors will be required to comply with the regulation in order to renew their licenses in 2015 and thereafter. The businesses that employ these licensees and that chose to pay the biennial renewal fees for their employees would be required to comply with the regulation.

(17) Identify the financial, economic and social impact of the regulation on individuals, small businesses, businesses and labor communities and other public and private organizations. Evaluate the benefits expected as a result of the regulation.

The Board's current biennial license renewal fees were last increased in 2008 (See 38 Pa.B. 4509), effective with the 2009 biennial renewal. At that time, it was anticipated that the increase would be sufficient to carry the board for at least 9 years. However, at the February 2, 2012, Board meeting, representatives from the Department of State's Bureau of Finance and Operations (BFO) presented a summary of the Board's revenue and expenses for fiscal years 2009-2010 and 2010-2011, and projected revenue and expenses through 2014-2015. BFO pointed out that as of June 2010, in spite of the increase, the Board still had a deficit of \$31,505.87. When BFO met with the Board again in 2013, the deficit at the close of fiscal year 2011-2012 was reported to be \$67,197.40. BFO projects that, without an increase to the biennial renewal fees, the Board will continue to incur deficits, necessitating a fee increase. Therefore, the Board determined that although the Board's financial picture is not as bleak as it appeared a year ago, it is still necessary to raise fees to meet or exceed projected expenditures, in compliance with section 18(c) of the act, to recoup existing deficits, and to put the Board back on firm financial ground. As a result, the Board voted at its July 9, 2013, meeting to increase the biennial renewal fees to \$95 (an increase of \$20 per biennium). The proposed new biennial renewal fees will enable the Board to recoup the projected deficits and meet its estimated expenditures for a number of years to come.

(18) Explain how the benefits of the regulation outweigh any cost and adverse effects.

The increase is mandated by section 18 (c) of the Social Workers, Marriage and Family Therapists and Professional Counselors Act (act) (63 P.S. § 1918(c)), which requires the Board to increase fees by regulation to meet or exceed projected expenditures if the revenues raised by fees, fines and civil penalties are not sufficient to meet expenditures over a 2-year period. The regulation benefits every citizen of the Commonwealth in that it will ensure the fiscal integrity of the Board and allow the Board to carry out its mission. The cost to the regulated community is outweighed by the Board's duty to license and regulate its licensees in the public interest.

(19) Provide a specific estimate of the costs and/or savings to the **regulated community** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

The result of the \$20 increase in biennial renewal fees is a cost to the regulated community in the amount of approximately \$358,860 every 2 years. ($\$20 \times 17,943 = \$358,860$).

(20) Provide a specific estimate of the costs and/or savings to the **local governments** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

The regulation would not result in costs or savings to local government.

(21) Provide a specific estimate of the costs and/or savings to the **state government** associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required. Explain how the dollar estimates were derived.

The Board will not incur an increase in administrative costs by implementing the rulemaking. Indeed, the regulatory amendment will permit the Board to recoup the costs of its operations. There are no other costs or saving to state government associated with compliance with the proposed rulemaking.

(22) For each of the groups and entities identified in items (19)-(21) above, submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

This proposed rulemaking would not require any additional recordkeeping or other paperwork.

(23) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY 2013-14	FY +1 2014-15	FY +2 2015-16	FY +3 2016-17	FY +4 2017-18	FY +5 2018-19
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated Community						
Local Government						
State Government						
Total Savings	N/A	N/A	N/A	N/A	N/A	N/A
COSTS:						
Regulated Community	N/A	\$358,860	N/A	\$358,860	N/A	\$358,860
Local Government						
State Government						
Total Costs	N/A	\$358,860	N/A	\$358,860	N/A	\$358,860
REVENUE LOSSES:						
Regulated Community						
Local Government						
State Government						
Total Revenue Losses	N/A	N/A	N/A	N/A	N/A	N/A

(23a) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY -3 2010-2011	FY -2 2011-2012	FY -1 2012-2013	Current FY 2013-2014
State Board of Social Workers, Marriage and Family Therapists and Professional Counselors	\$744,179.12	\$706,326.85	\$725,000.00	\$747,000.00

(24) For any regulation that may have an adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), provide an economic impact statement that includes the following:

- (a) An identification and estimate of the number of small businesses subject to the regulation.
 - (b) The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed regulation, including the type of professional skills necessary for preparation of the report or record.
 - (c) A statement of probable effect on impacted small businesses.
 - (d) A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation.
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- (a) Assuming that the majority of licensees work for “small businesses” as that term is defined by the Regulatory Review Act and the SBA, there could be as many as 17,943 small businesses subject to the regulation.**
 - (b) There are no projected reporting, or recordkeeping costs required for compliance. There are no additional administrative costs required for compliance. (The administrative costs would be those associated with filling out the biennial renewal form or online renewal application and either writing a check or processing the payment of the fee. These costs would be the same regardless of the increase in the fee.) Also, these fees can be avoided by the small businesses by simply requiring employees to pay their own biennial renewal fees.**
 - (c) The probable effect on impacted small businesses would be a \$20 increase in the biennial renewal fee for each of the employed licensees.**
 - (d) The board originally considered three alternatives as set forth in item no. (26) below. Ultimately, based on its review of the updated financial information, the Board was able to lower the fee by \$20 in response to comments on the proposed rulemaking. The Board believes the new fee (\$95) to be the least burdensome acceptable alternative.**

(25) List any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, the elderly, small businesses, and farmers.

No special provisions have been developed for any affected groups or persons.

(26) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.

The Bureau of Finance and Operations presented possible increases of \$35 (to \$110); \$40 (to \$115) and \$ 50 (to \$125). The \$35 increase was originally rejected because BFO had projected that it would not allow the Board to recoup the existing and projected deficits until well after 2021. The \$50 increase was rejected because the Board saw it as excessive. The Board considered the \$40 increase to be the least restrictive alternative that meets the statutory mandate to provide for biennial expenditures and allows the Board to recoup the existing and projected deficits at a reasonable pace. Since that time, updated financial information now seems to indicate that, although an increase is still necessary, a \$20 increase would be sufficient to recoup the deficits, cover current expenditures and put the Board on firm financial footing, absent unforeseen circumstances.

(27) In conducting a regulatory flexibility analysis, explain whether regulatory methods were considered that will minimize any adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), including:

- a) The establishment of less stringent compliance or reporting requirements for small businesses;
- b) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;
- c) The consolidation or simplification of compliance or reporting requirements for small businesses;
- d) The establishment of performing standards for small businesses to replace design or operational standards required in the regulation; and
- e) The exemption of small businesses from all or any part of the requirements contained in the regulation.

a) & b) All licensees renew biennially. The Board did not consider less stringent reporting requirements or deadlines for small businesses or for licensees that work for small businesses.

c) There are no compliance or reporting requirements that could be consolidated or simplified. The biennial renewal process is the same whether a particular licensee is employed by a small business or a large business.

d) The regulations do not contain design or operational standards that need to be altered for small businesses.

e) To exclude any licensees from the requirements contained in the regulation (an increased biennial renewal fee) based on the size of their employers would not be consistent with public health and welfare because it would prevent the Board from obtaining adequate revenue to meet projected expenditures and it would not be able to carry out its legislative mandate.

(28) If data is the basis for this regulation, please provide a description of the data, explain in detail how the data was obtained, and how it meets the acceptability standard for empirical, replicable and testable data that is supported by documentation, statistics, reports, studies or research. Please submit data or supporting materials with the regulatory package. If the material exceeds 50 pages, please provide it in a searchable electronic format or provide a list of citations and internet links that, where possible, can be accessed in a searchable format in lieu of the actual material. If other data was considered but not used, please explain why that data was determined not to be acceptable.

No data, studies or references were used to justify the regulation.

(29) Include a schedule for review of the regulation including:

A. The date by which the agency must receive public comments: **April 8, 2013**

B. The date or dates on which public meetings or hearings will be held:

No public hearings are scheduled. The Board discusses its regulatory proposals at monthly meetings usually held on the second Tuesday of each month.

C. The expected date of promulgation of the proposed regulation as a final-form regulation: **Fall of 2013**

D. The expected effective date of the final-form regulation: **Upon publication as final.**

E. The date by which compliance with the final-form regulation will be required:

The increased biennial renewal fees apply to the March 1, 2015 biennial renewal.

F. The date by which required permits, licenses or other approvals must be obtained: **N/A**

(30) Describe the plan developed for evaluating the continuing effectiveness of the regulations after its implementation.

The Board continually reviews the efficacy of its regulations, as part of its annual review process under Executive Order 1996-1. The Board reviews its regulatory proposals at regularly scheduled public meetings, generally the second Tuesday of each month. The Board will meet on the following remaining dates in 2013: September 3, October 15, November 5 and December 3, 2013. More information can be found on the Department's website (www.dos.state.pa.us).

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State Board of Social Workers, Marriage and Family Therapists and Professional Counselors

(AGENCY)

BY: _____
(DEPUTY ATTORNEY GENERAL)

DOCUMENT/FISCAL NOTE NO. 16A-6920

DEC 16 2013

DATE OF APPROVAL

DATE OF ADOPTION: _____
BY: Laura Hinds, LSW
Laura Hinds, LSW

DATE OF APPROVAL

(Executive Deputy General Counsel
Strike inapplicable title)

TITLE: Chairperson
(EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)

- Check if applicable
Copy not approved.
Objections attached.
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Attorney General approval or
objection within 30 day after
submission.

FINAL-FORM RULEMAKING

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS
STATE BOARD OF SOCIAL WORKERS, MARRIAGE AND FAMILY
THERAPISTS AND PROFESSIONAL COUNSELORS**

49 PA. CODE, CHAPTER 47, § 47.4

BIENNIAL RENEWAL FEES

The State Board of Social Workers, Marriage and Family Therapists and Professional Counselors (Board) hereby amends § 47.4 (relating to licensure fees) to read as set forth in Annex A. The final-form rulemaking increases the biennial license renewal fees for licensed social workers, licensed clinical social workers, licensed marriage and family therapists and licensed professional counselors from \$75 to \$95. Although the final-form regulation will be effective upon publication in the Pennsylvania Bulletin, it is expected that the increased fees will be implemented for the March 1, 2015, renewal.

Statutory Authority

Section 18 (c) of the Social Workers, Marriage and Family Therapists and Professional Counselors Act (act) (63 P.S. § 1918(c)) requires the Board to increase fees by regulation to meet or exceed projected expenditures if the revenues raised by fees, fines and civil penalties are not sufficient to meet expenditures over a 2-year period.

Background and Need for Amendment

Under section 18(c) of the act, the Board is required by law to support its operations from the revenue it generates from fees, fines and civil penalties. In addition, the act provides that the Board must increase fees if the revenue raised by fees, fines and civil penalties is not sufficient to meet expenditures over a 2-year period. The Board raises the majority of its revenue through biennial renewal fees. A small percentage of its revenue comes from application fees and civil penalties. At the February 2, 2012, Board meeting, representatives from the Department of State's Bureau of Finance and Operations (BFO) presented a summary of the Board's revenue and expenses for fiscal years 2009-2010 and 2010-2011, and projected revenue and expenses through 2014-2015.

At the time, BFO projected that, without an increase to the biennial renewal fees, the Board would incur significant deficits throughout the foreseeable future. Therefore, the Board determined that it was necessary to raise fees to meet or exceed projected expenditures, in compliance with section 18(c) of the act. As a result, the Board voted at its March 13, 2012 meeting to increase the biennial renewal fees to \$115.

Summary of Comments

The Board published a notice of proposed rulemaking in the Pennsylvania Bulletin on March 9, 2013, for thirty days of public comment. See, 43 Pa.B. 1281. During the public comment period, the Board received comments from the Pennsylvania Society for Clinical Social Work (PSCSW), the National Association of Social Workers – Pennsylvania Chapter (NASW-PA) and 16 individual licensed social workers/licensed clinical social workers. On April 24, 2013, the Board received comments from the House Professional Licensure Committee (HPLC); and on May 8, 2013, the

Independent Regulatory Review Commission (IRRC) submitted comments to the Board.

PSCSW submitted comments on behalf of its 720 members requesting that there be no raise in the biennial renewal fee. PSCSW pointed out that with social services losing funding and Medicare and managed care companies lowering the rate of reimbursement, now is not the time to be raising licensure fees. NASW-PA likewise suggested that higher licensure fees will dissuade scores of social workers from obtaining a license and discourage current licensees from renewing, thus negatively impacting the Board's revenue stream. NASW-PA encouraged the Board to consider pursuing legislative action similar to House Bill 2274, which was introduced in 2012, that would have provided professional licensure boards additional means of collecting fines, penalties and fees from licensees who violate the act, rules or regulations, rather than placing the entire burden on all licensees. NASW-PA also asked for more information regarding the Board's expenses and an explanation of why the 2008 increase, which was projected to be sufficient through 2016, failed to meet expectations.

Each of the 16 individual licensees that commented asked the Board to consider no increase or a more modest increase in the biennial renewal fee. Nate Prentice, LCSW, pointed out that insurance reimbursement has been stagnant for years and social workers are struggling to make ends meet as the industry goes to "fee for service" with no benefits and no job security. He suggested that the Board's efforts are better directed at dealing with insurance regulation and reimbursements in Pennsylvania, noting that if social workers can get a living wage, maybe they would be better able to afford a fee increase. Amy Waugh, LSW, stated that she values licensure and appreciates the need to generate revenue to fund regulation and control. She further suggested that implementing bachelor level licensure would generate more revenue for the Board. Finally, she asked what research the Board had conducted to "inform the costs of renewal and best allocate the resources generated by such fees."

Kathryn De Frain, LSW, suggested that given the current economic situation, with increased costs for food, clothing and other essentials, many licensees who are not required to maintain licensure will reconsider renewing their licenses at all. She was joined in this sentiment by Adrienne Gallagher, LCSW; and Barbara Davis, LSW. Erica Hesselton, LSW; Marybeth Kennedy, LCSW; and others point out that more and more these increased costs of license renewal, as well as those associated with completion of continuing education credits, are paid by the licensees, not their employers. Sinnika Davis, LSW, agreed that the costs of completing 30 hours of continuing education are also rising and that social workers need a break. Kim Beamon, LCSW, also noted that social work salaries are traditionally low, and it becomes cost prohibitive to maintain the license, pay for required continuing education, repay student loans, and other costs associated with the profession. Elodie Witkowski, LCSW, noted that the increase is especially difficult for individuals with multiple licenses/certifications. Linda Sharp, LCSW, suggested that the amount of the proposed fee is "outrageous" when compared to the fees for other professions such as nurses and

medical doctors, given the disparity in the pay. She also fears that the high cost of maintaining a license may dissuade organizations from requiring licensure as a condition of employment, especially in the area of children and youth services, which could result in a decrease in the quality of services rendered.

Any Nothelfer, LSW; and Barbara Hemmendinger, LCSW, likewise opposed the proposed increase as a hardship. Nina Aniskevich, LSW, joined the other commentators and asked the Board to explore other options rather than raising these costs to licensees. Deborah Wiley, LCSW, asked why the fee is being raised, and at such a significant rate. Maryjane Lesnick Mertz, LCSW, suggested that the Board consider a smaller fee for social workers who see fewer clients.

The HPLC requested additional information pertaining to the major cost centers of the Board and explaining any significant increases in its expenditures. The Independent Regulatory Review Commission shared the concerns of the commentators and the HPLC and asked for further explanation of why this increase is needed, the nature of any increased expenditures, and whether the Board has considered lowering expenses.

The Board's Response

In response, the Board first notes that it has been well over a year since BFO first met with the Board suggesting that a fee increase was necessary. Therefore, after considering all of the comments, the Board asked BFO to provide an updated analysis of the Board's fiscal situation based on current data. BFO provided updated information to the Board which was discussed at the Board's regularly scheduled meeting on June 11, 2013. Two changes in the Board's current financial condition were noted at that meeting. First, the number of active licensees has increased by nearly 1,000 since the proposed increase a year ago. Second, the Board has been able to reduce expenditures below the projections of a year ago, such that the projected deficits have been reduced, although not eliminated. For example, when the Board approved the increase in March of 2012, BFO projected a negative fund balance at the end of fiscal year 2011-2012 of approximately (\$209,350). However, the actual balance at the end of that year came in at (\$67,197.40). So, although the situation still necessitates a fee increase, the situation is not as bleak as it appeared a year ago.

As noted above, NASW-PA encouraged the Board to consider pursuing legislative action similar to House Bill 2274, which was introduced in 2012, that would have provided professional licensure boards additional means of collecting fines, penalties and fees from licensees who violate the act, rules or regulations, rather than placing the entire burden on all licensees. In response, the Board notes that although House Bill 2274 did not pass last session, another bill, House Bill 261, which would provide similar authority, is expected to pass this session. However, the Board notes that the amount of revenue produced through civil penalties fluctuates dramatically, and in recent

years represents only about 3% of total revenue. Civil penalties are not intended to generate revenue, rather they are imposed as a deterrent. At this point in time, the Board has a total of \$73,700 in unpaid civil penalties, which is approximately 5% of current biennial expenditures. Even if the Board were to collect all unpaid civil penalties, it would not eliminate the deficit between revenue and expenditures; nor would it be a solution on an on-going basis.

With regard to the 2008 increase falling short of expectations, the Board would note that at the time it was proposed in 2007, BFO anticipated that the \$30 increase would enable the Board to meet its estimated expenditures for at least 9 years. See, 37 Pa.B. 5264. However, expenditures have increased considerably above what was projected at that time. For example, in 2007 projected biennial expenditures for the 2009 – 2011 biennium were expected to be \$1,226,000. Actual expenditures for that period came in at \$1,421,643.08. In 2007, projected expenditures for the 2011 – 2013 biennium were estimated at \$1,339,000. Actual expenditures for the current biennium are now expected to total at least \$1,431,326.85. Because the increased fee was set at a level capable of producing approximately \$1,300,000 in biennial revenue, the deficit situation has not been entirely resolved with the prior increase and the act requires the Board to increase its fees such that biennial revenue is capable of covering projected expenditures over a 2-year period. Thus, the Board is faced with the difficult decision to increase fees again at this time beginning in 2015.

NASW-PA, the HPLC and IRRC all asked for more information regarding what is driving the increases in expenditures. The major expense categories where increases have occurred in recent years are board administration, legal office, hearing expenses, enforcement and investigation, professional compliance and professional health monitoring. Specifically, the Board's administrative costs tend to fluctuate depending on whether a given year is a "renewal year." During renewal years, additional staff is required to process license renewals for the Board's 17,000+ licensees. So, to accurately assess the costs relating to Board administration, it is necessary to look at expenditures on a biennial basis (consisting of a renewal year, followed by a non-renewal year). Board administrative costs for fiscal years 2006-2007 and 2007-2008 totaled \$481,610.30. For fiscal years 2008-2009 and 2009-2010, administrative costs were \$532,456.32, a 10.5% increase over the prior biennium. For 2010-2011 and 2011-2012, administrative costs were \$545,979.26, an increase of 2.5% over the prior biennium. This information tells us two things, administrative costs are still rising, but at a lower rate.

Legal office costs include the costs of the Board's legal counsel, as well as the cost of prosecuting, adjudicating and defending disciplinary matters before the Board. Legal office costs increased from \$152,697.29 in fiscal year 2006-2007 to a high of \$212,646.07 in fiscal year 2009-2010, and have since moderated to \$166,461.88 in fiscal year 2011-2012. At the time of the last fee increase, legal office costs had literally doubled in only 5 years (from \$75,326.65 in fiscal year 2002-2003 to \$152,697.29 in fiscal year 2006-2007). These costs fluctuate dramatically and are difficult to estimate because they are related to the number of complaints filed and the number of those

complaints that merit prosecution. Hearing expenses are also dependent upon the number of prosecutions, and although these costs had moderated in recent years (averaging about \$7,000 a year), during the first nine months of fiscal year 2012-2013, the Board has already incurred about \$15,286.75 in hearing expenses – twice the average annual expenditures. Enforcement and investigation has also seen a dramatic increase in expenses – from \$79,297.80 in fiscal year 2006-2007 to \$156,257.15 in fiscal year 2011-2012. Likewise, the professional compliance office expenses have nearly tripled over the same period from \$12,932.89 in fiscal year 2006-2007 to \$37,579.45 in fiscal year 2011-2012.

The costs associated with enforcement and investigation, professional compliance office, legal office and hearings are all dependent upon the number of complaints filed, the number of those complaints that merit investigation, and the number of investigations that result in prosecutions. It also depends greatly on the number of matters that are resolved through consent agreements and those that require hearings to be conducted. The Board's and the Department's presence on the internet has resulted in increased public awareness of the complaint process and has made it easier to file a complaint against a licensee. Each complaint must be reviewed or investigated to determine if a violation of the act or regulations has occurred. The legal office must then prosecute those matters where a violation is alleged. The Board incurs hearing expenses for each matter actually prosecuted, and the Board incurs additional legal costs defending any appeals. In fiscal year 2009-2010, the Board imposed a total of 20 sanctions in disciplinary proceedings; in fiscal year 2010-2011, the total number of sanctions imposed was 47. Ultimately, the number of complaints and disciplinary actions drive the bulk of the Board's costs, and the Board has no control over the number of complaints filed against its licensees or the number of disciplinary actions brought by the Commonwealth. The Board has held the line on costs that it can control, such as Board member expenses and administrative costs.

It was suggested that the licensees could withstand a fee increase if they were able to earn a living wage, and that the Board's efforts should be directed at insurance regulation and reimbursements in Pennsylvania. Unfortunately, this Board's statutory authority does not extend to insurance or rates of reimbursement for social services. It was also suggested that "bachelor level licensing" would produce additional revenue for the Board. The Board is aware that NASW-PA has been pursuing legislation that would include licensing individuals at the bachelor's degree level, which would significantly increase the licensee population of the Board, thus producing additional revenue. The Board is also aware, through its experience since the addition of licensed clinical social workers, marriage and family therapists and professional counselors, that additional licensees also lead to increasing expenses. The Board is monitoring the proposed legislation (Senate Bill 807) which would license bachelor level social workers because it would impact the Board's budget, but at this time it does not appear to be a panacea that would solve the current deficit situation.

NASW-PA and other commentators suggested that a dramatic increase in the biennial

renewal fee could cause many licensees, who are not required to maintain licensure, to let their licenses lapse without renewing, thus causing a loss of revenue to the Board. It is for that reason that the Board has tried to balance a more modest fee increase with ongoing efforts to hold the line on expenses. It was also suggested that the biennial renewal fee is out of line with other professional licensure fees. The Board surveyed the renewal fees for social workers, marriage and family therapists and professional counselors from surrounding states and has found fees ranging from \$60 to \$225. Comparing licensure fees across the professions, especially in relation to the relative salaries of those professions, is not instructive because the Board is not tasked with setting fees in relation to other professions, but rather is required by law to set its fees at a level necessary to cover its projected expenses in regulating licensed social workers, clinical social workers, marriage and family therapists and professional counselors.

As a result of the updated financial information, and in response to the comments from all of the commentators, the Board has determined that, although an increase is still necessary to comply with the act, a more modest \$20 increase is in order at this time. Therefore, the final-form rulemaking has been amended to increase the fee from \$75 to \$95. This fee is capable of producing sufficient biennial revenue to cover projected biennial expenses, eliminate the deficit and place the Board back on firm financial ground.

Description of Proposed Amendments

The final form rulemaking amends § 47.4 to increase the biennial renewal fee for all classes of license (licensed social workers, licensed clinical social workers, licensed marriage and family therapists and licensed professional counselors from \$75 to \$95.

Fiscal Impact

The proposed amendment will increase the biennial renewal fees for licensees of the Board. There are currently approximately 17,680 licensees that will be required to pay more to renew their licenses when they expire in 2015, and thereafter. Small businesses that employ licensees of the Board may be impacted if they choose to pay the biennial renewal fees on behalf of employees. The proposed regulation should have no other fiscal impact on the private sector, the general public or political subdivisions of the Commonwealth.

Paperwork Requirements

The proposed rulemaking will require the Board to alter some of its forms to reflect the new fees; however, the amendment will not create additional paperwork for the regulated community or for the private sector.

Sunset Date

The act requires the Board to monitor its revenue and costs on a fiscal year and biennial basis. Therefore, no sunset date has been assigned.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on February 21, 2013, the Board submitted a copy of the notice of proposed rulemaking, published at 43 Pa.B. 1281 (March 9, 2013), to the House Professional Licensure Committee (HPLC), the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) and the Independent Regulatory Review Commission (IRRC) for review and comment.

In compliance with section 5(c) of the Regulatory Review Act (71 P.S. § 745.5(c)), the Board also provided IRRC, SCP/PLC, and HPLC with copies of comments received as well as other documents when requested. In preparing the final-form regulation, the Board has considered the comments received from IRRC, the HPLC, and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P.S. § 745.5a(j.2)), this final-form regulation was (deemed) approved by the HPLC on _____, 2014, and deemed approved by SCP/PLC on _____, 2014. Under section 5(g) of the Regulatory Review Act (71 P.S. § 745.5(g)), the final regulation was approved by IRRC on _____, 2014.

Contact Person

Further information may be obtained by contacting Megan Castor, Counsel, State Board of Social Workers, Marriage and Family Therapists and Professional Counselors, P.O. Box 2649, Harrisburg, PA 17105-2649.

Findings

The State Board of Social Workers, Marriage and Family Therapists and Professional Counselors finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202) and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law and all comments were considered.

(3) The amendments to the final form rulemaking do not enlarge the purpose of proposed rulemaking published at 43 Pa.B. 1281.

(4) This final-form rulemaking is necessary and appropriate for administering and enforcing the authorizing act identified this Preamble.

Order

The State Board of Social Workers, Marriage and Family Therapists and Professional Counselors, acting under its authorizing statutes, orders that:

(a) The regulations of the Board at 49 Pa. Code § 47.4 are amended to read as set forth in Annex A.

(b) The Board shall submit this order and Annex A to the Office of General Counsel and the Office of Attorney General as required by law.

(c) The Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) This order shall take effect on publication in the *Pennsylvania Bulletin*.

Laura L. Hinds, L.S.W.
Chairperson

ANNEX A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

**CHAPTER 47. STATE BOARD OF SOCIAL WORKERS, MARRIAGE AND FAMILY
THERAPISTS AND PROFESSIONAL COUNSELORS**

GENERAL PROVISIONS

* * * * *

§ 47.4. Licensure fees.

(a) The fee schedule for licensure as a licensed social worker, provisional license, licensed clinical social worker, licensed marriage and family therapist or licensed professional counselor shall be as follows:

* * * * *

(2) Biennial renewal for a licensed social worker, clinical social worker, marriage and family therapist or professional counselor[\$75] \$115 \$95

* * * * *

COMMENTATOR'S LIST 16A-6920

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COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS
STATE BOARD OF SOCIAL WORKERS, MARRIAGE
AND FAMILY THERAPISTS AND PROFESSIONAL COUNSELORS
Post Office Box 2649
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February 6, 2014

The Honorable George D. Bedwick, Vice Chairman
INDEPENDENT REGULATORY REVIEW COMMISSION
14th Floor, Harristown 2, 333 Market Street
Harrisburg, Pennsylvania 17101

Re: Final Regulation
State Board of Social Workers, Marriage and Family Therapists and Professional Counselors
16A-6920: BIENNIAL RENEWAL FEES

Dear Vice Chairman Bedwick:

Enclosed is a copy of a final rulemaking package of the State Board of Social Workers, Marriage and Family Therapists and Professional Counselors pertaining to Biennial Renewal Fees.

The Board will be pleased to provide whatever information the Commission may require during the course of its review of the rulemaking.

Sincerely,

A handwritten signature in cursive script that reads "Laura Hinds".

Laura Hinds, MSW, LSW, Chairperson
State Board of Social Workers, Marriage and
Family Therapists and Professional Counselors

CKM/LH: rs

Enclosure

cc: Travis N. Gery, Esq., Commissioner of Professional and Occupational Affairs
Patricia Allan, Director of Policy, Department of State

Kevin Schmidt, Chief Counsel, Department of State

Cynthia Montgomery, Regulatory Counsel

Department of State

Megan Castor, Counsel, State Board of Social Workers, Marriage and Family Therapists and Professional Counselors

Sandra Matter, Board Administrator, State Board of Social Workers, Marriage and Family Therapists and Professional Counselors

**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT**

I.D. NUMBER: 16A-6920

SUBJECT: BIENNIAL RENEWAL FEES

AGENCY: DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS
STATE BOARD OF SOCIAL WORKERS, MARRIAGE AND FAMILY
THERAPISTS AND PROFESSIONAL COUNSELORS

TYPE OF REGULATION

- Proposed Regulation
- X Final Regulation
- Final Regulation with Notice of Proposed Rulemaking Omitted
- 120-day Emergency Certification of the Attorney General
- 120-day Emergency Certification of the Governor
- Delivery of Tolled Regulation
 - a. With Revisions
 - b. Without Revisions

2014 FEB -6 11 10 33

RECEIVED
IRRC

FILING OF REGULATION

<u>DATE</u>	<u>SIGNATURE</u>	<u>DESIGNATION</u>
		<i>HOUSE COMMITTEE ON PROFESSIONAL LICENSURE</i>
2/6/14	<i>Annie Kelly</i>	MAJORITY CHAIR <u>Julie Harhart</u>
		MINORITY CHAIR _____
		<i>SENATE COMMITTEE ON CONSUMER PROTECTION & PROFESSIONAL LICENSURE</i>
2/6/14	<i>Mary Walmer</i>	MAJORITY CHAIR <u>Robt. M. Tomlinson</u>
2/6/14	<i>Stephen Smith</i>	MINORITY CHAIR <u>Sen Lisa Boscola</u>
2/6/14	<i>K Cooper</i>	<i>INDEPENDENT REGULATORY REVIEW COMMISSION</i>
		<i>ATTORNEY GENERAL</i> (for Final Omitted only)
		<i>LEGISLATIVE REFERENCE BUREAU</i> (for Proposed only)