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Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Board of Counseling, Department of Health Professions
Virginia Administrative Code (VAC) citation(s)	18VAC115-30-10 et seq.
Regulation title(s)	Regulations Governing the Certification of Substance Abuse Counselors
Action title	Updating and clarifying regulations
Date this document prepared	10/4/16

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Subject matter and intent

Please describe briefly the subject matter, intent, and goals of the planned regulatory action.

The Board intends to amend regulations for certified substance abuse counselors (CSAC) and counseling assistants to clarify portions that have confused applicants, add more specific requirements for supervised practice to better ensure accountability and quality in the experience, add time limits for completion of experience to avoid perpetual supervisees who may continue to practice without passage of an examination and completion of certification, add requirements for continuing education as a requisite for renewal to ensure on-going competency to practice, and place additional standards of practice in regulation to address issues the Board has seen in complaints and disciplinary proceedings and for consistency with other professions in behavioral health.

Legal basis

Please identify the (1) the agency (includes any type of promulgating entity) and(2) the state and/or federal legal authority for the proposed regulatory action, including the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable. Your citation should include a specific provision, if any, authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.

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

Chapter 24 establishes the general powers and duties of health regulatory boards including the responsibility to promulgate regulations in accordance with the Administrative Process Act which are reasonable and necessary.

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

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.

The specific mandate for the Board of Counseling to regulate CSACs is found in:

§ 54.1-3505. Specific powers and duties of the Board.

In addition to the powers granted in § 54.1-2400, the Board shall have the following specific powers and duties:

7. To promulgate, subject to the requirements of Article 1.1 (§ 54.1-3507 et seq.) of this chapter, regulations for the qualifications, education, and experience for licensure of licensed substance abuse treatment practitioners and certification of certified substance abuse counselors and certified substance abuse counseling assistants. The requirements for membership in NAADAC: the Association for Addiction Professionals and its national examination may be considered by the Board in the promulgation of these regulations. The Board also may provide for the consideration and use of the accreditation and examination services offered by the Substance Abuse Certification Alliance of Virginia. The educational credit hour, clinical experience hour, and clinical supervision hour requirements for licensed substance abuse treatment practitioners shall not be less than the educational credit hour, clinical experience hour, and clinical supervision hour requirements for licensed professional counselors. Such regulations also shall establish standards and protocols for the clinical supervision of certified substance abuse counselors and the supervision or direction of certified substance abuse counseling assistants, and reasonable access to the persons providing that supervision or direction in settings other than a licensed facility.

Purpose

Please describe the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, please explain any potential issues that may need to be addressed as the regulation is developed.

The Board intends to add more specificity to the supervised experience requirements and limit the amount of time a person may take to obtain experience and certification. By doing so, clients receiving substance abuse counseling services are more assured of the oversight for those working under supervision and of the competency of their counselors once certified. Additional standards of conduct and causes for disciplinary action will provide further guidance to counselors and assistants on the expectations for ethical practice and give the Board more explicit grounds on which to discipline practitioners for the purpose of protecting the health, safety and welfare of the public they serve.

Substance

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

The following sections have been identified for amendments:

Part I will be amended to update several definitions and fee requirements and add a section for rules on maintaining current name and address with the Board.

Part II will be amended to clarify prerequisites for certification, including changing “documentation” or “affidavit” to “verification” or “attestation” to accommodate on-line applications. The Board will consider amending requirements for endorsement to include verification of a passing score on a board-approved examination. The Board will consider updating and adding to the course content listed in section 50. The hours of experience in performing certain will likely be moved from the section on education (50) to the section on experience (60).

In section 60, the Board will consider adding a requirement for completion of education and registration of supervision approved by the Board prior to the start of supervised practice. There may also be a time limit set on the acquisition of hours of supervision with an allowance for an appeal to the Board for an extension. The minimum hours of supervision by the supervisor will be clarified, similar to recent changes in the counseling regulations. Subsection C will be amended to require some professional training in supervision for supervisors, and the subsection on supervisory responsibilities will be amended to specify how supervisees are to identify themselves to clients and how long documentation of supervision must be maintained.

Sections 61 and 62 on requirements for substance abuse counseling assistants will be clarified and updated with amendments similar to those for substance abuse counselors. The Board

intends to separate the educational and experience requirements by adding a section 63 to set out the rules for supervised experience.

Part III (Examinations) will be incorporated into Part II on Requirements for Certification and amended to give a candidate approved to sit for an examination two years to take the exam and pass it. After the applicant has applied twice and not passed the examination, he would be required to complete an additional six months of supervision.

Part IV on renewal and reinstatement may be amended to add requirements for continuing education and more specific requirements for persons who are seeking reinstatement, including demonstration of continued competence and submission of a report from the National Practitioner Data Bank.

Part V on standards of practitioner will be amended to include standards from other behavioral sciences professions that are currently missing in the CSAC regulations, such as maintenance of client records, informed consent, and confidentiality provisions. Likewise, the grounds for disciplinary action will be revised for more specificity and expanded to include such things as performance of an act likely to deceive, defraud, or harm the public.

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.

Since the requirements for certification and practice are set in regulation, amendments are necessary to make any changes. There are no alternatives that meet the essential purpose of protection of the public.

Public participation

Please indicate whether the agency is seeking comments on the intended regulatory action, including ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public hearing is to be held to receive comments. Please include one of the following choices: 1) a panel will be appointed and the agency's contact if you're interested in serving on the panel is _____; 2) a panel will not be used; or 3) public comment is invited as to whether to use a panel to assist in the development of this regulatory proposal.

The agency is seeking comments on this regulatory action, including but not limited to: ideas to be considered in the development of this proposal, the costs and benefits of the alternatives stated in this background document or other alternatives, and the potential impacts of the regulation.

The agency is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include: projected reporting, recordkeeping, and other administrative costs; the probable effect of the regulation on affected small businesses; and the description of less intrusive or costly alternatives for achieving the purpose of the regulation.

Anyone wishing to submit comments may do so via the Regulatory Townhall website , www.townhall.virginia.gov, or by mail, email or fax 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 day of the public comment period.

A public hearing will be held following the publication of the proposed stage of this regulatory action and notice of the hearing will be posted on the Virginia Regulatory Town Hall website (<http://www.townhall.virginia.gov>) and on the Commonwealth Calendar website (<https://www.virginia.gov/connect/commonwealth-calendar>). Both oral and written comments may be submitted at that time.

A regulatory panel will not be used to develop the proposed regulation, which will be drafted by the Regulatory Committee of the Board in consultation with certified substance abuse counselors.