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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)	18VAC115-20 18VAC115-50 18VAC115-60
Regulation title(s)	Regulations Governing the Practice of Professional Counseling Regulations Governing the Practice of Marriage and Family Therapy Regulations Governing the Licensure of Substance Abuse Practitioners
Action title	Periodic review
Date this document prepared	2/28/19

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Virginia Register Form, Style, and Procedure Manual for Publication of Virginia Regulations*.

Brief Summary

Please provide a brief summary (preferably no more than 2 or 3 paragraphs) of the subject matter, intent, and goals of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation).

The intent of the amendments resulting from the periodic review is to update regulations, clarify language, achieve consistency among requirements for licensees, and facilitate obtaining license by examination or by endorsement. Additional standards of practice and ground for disciplinary action are included to address issues that have arisen or for consistency with other behavioral health professional regulations.

Similar changes are recommended in all three chapters, with some specific amendments to Chapters 50 and 60, including elimination of the waiver of a licensing examination in marriage and family therapy or substance abuse treatment for counselors who want to obtain those specialized licenses.

Acronyms and Definitions

Please define all acronyms or technical definitions used in the Agency Background Document. .

N/A

Mandate and Impetus

Please identify the mandate for this regulatory change, and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, board decision, etc.). For purposes of executive branch review, "mandate" has the same meaning as defined in Executive Order 14 (as amended, July 16, 2018), "a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."

The impetus for the regulatory change is the periodic review that was filed on July 5, 2018 with a comment period from August 6, 2018 to September 5, 2018.

Legal Basis

Please identify (1) the agency or other promulgating entity, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia or Acts of Assembly chapter number(s), if applicable. Your citation must 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 or promulgating entity'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 Counseling the authority 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 or licensure 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 or license qualified applicants as practitioners of the particular profession or professions regulated by such board.

...

6. To promulgate regulations in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.) which are reasonable and necessary to administer effectively the regulatory system. Such regulations shall not conflict with the purposes and intent of this chapter or of Chapter 1 (§ 54.1-100 et seq.) and Chapter 25 (§ 54.1-2500 et seq.) of this title. ...

Specific authority for regulation of the profession of counseling is found in Chapter 35 of Title 54.1:

§ 54.1-3503. Board of Counseling.

The Board of Counseling shall regulate the practice of counseling, substance abuse treatment, and marriage and family therapy.

§ 54.1-3506. License required.

In order to engage in the practice of counseling or marriage and family therapy or in the independent practice of substance abuse treatment, as defined in this chapter, it shall be necessary to hold a license

Purpose

Please describe the specific reasons why the agency has determined that this regulation 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 has added more pathways to licensure by endorsement to encourage portability for licensees from other states. By doing so, Virginia citizens with mental health needs may have greater access to care. Additional standards of conduct and causes for disciplinary action will provide further guidance to licensees 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.

Changes are being considered for all three chapters regulating licensed professions under the Board of Counseling (Chapter 20 – professional counselors; Chapter 50 – marriage and family therapists; Chapter 60 – substance abuse practitioners). In addition to edits for clarity and updating of terminology, the following changes are recommended:

Definitions

- Amend “face-to-face” to include use of visual, interactive, real-time technology

Fees

- Amend the fee for adding or changing supervisors to include changing the work-site of supervision

Many sections

- Include “registration” as a “license” type applicable to the requirements of that section

Licensure by endorsement

- Clarify that the license held in another jurisdiction must be for “independent clinical practice” to avoid misleading applicants, due to variations in titles and licenses in other states.
- Include additional pathways for licensure by endorsement by adding 1) evidence of active licensure for 10 years prior to application; 2) evidence of active licensure for three years and a national certification or graduation from an accredited program.

Coursework requirements

- Include recognition of an applicable degree from an accredited program as meeting the requirements of this section as a way of expediting licensure for persons with such degrees.
- Include allowance for a person to make up deficit hours in an internship by adding those hours to the residency rather than having to obtain and complete a new internship with the requisite hours.

Residency requirements

- Clarify that the time frame for completion of a residency begins from the start of the residency
- Include allowance for a person to request an interruption in the residency of no more than three years
- Clarify in the requirements for a supervisor that he or she is responsible for the services of a supervisee regardless of whether he/she is on-site or off-site, and that copies of quarterly reports to the board must be maintained for five years after the residency is completed or terminated.

Examination requirements

- Eliminate the current requirement for an applicant who has not passed the examination within two years of approval to re-apply and be given two more years to pass. Instead, an applicant would be required to pass the examination within six years of the date of initial approval of the residency or within no more than seven years if an interruption has been granted.

Continuing competency activity criteria

- Add attendance at a board meeting or disciplinary proceeding for a maximum of two hours during one renewal period.

- Reduce the hours that may be credited for receiving clinical supervision/consultation from 10 to six.

Documenting compliance with continuing competency requirements

- Add documentation for participation in clinical supervision/consultation and change affidavit to attestation

Late renewal; reinstatement

- Add requirement for National Practitioner Data Bank report to reinstatement

Standards of practice

- Amend the standard on a client who is receiving services from another mental health professional to simplify continuation of services by documenting efforts to coordinate care.
- Add a standard for making appropriate referrals based on the interest of the client.
- Add a standard on confidentiality between a practitioner and a client.
- Clarify that rules on dual or multiple relationship apply to a person under the licensee's supervision

Grounds for revocation, etc.

- Clarify that procuring, attempting to procure or maintaining a license by fraud or misrepresentation may be grounds for disciplinary action
- Update terminology relating to substance misuse
- Add grounds for: 1) knowingly allowing a person under supervision to jeopardize client safety or practice outside the scope of practice; 2) disciplinary action taken in another jurisdiction; 3) failing to cooperate with an employee of the Department in the conduct of an investigation; and 4) failing to report child abuse or elder abuse as required by law.

Changes for only Chapter 50 – Marriage and Family Therapy

Coursework requirements

- Categories of marriage and family studies and marriage and family therapy are being combined to avoid confusion; the hours are the same (rather than 6 and 6, a combined total of 12).

Residency requirements

- In current regulations, it is required that the residency consist of practice in areas referenced in the coursework requirements; that is replaced with reference to specific areas of practice that are also included in the residency for professional counseling.
- For consistency with professional counseling and clarity for applicants, a rule is added to specify that unsupervised hours outside of a residency are not accepted towards meeting the requirements.

Examination requirements

- The waiver of an examination in marriage and family therapy for applicants who hold a professional counselor license is eliminated; the waiver was included when marriage and

family therapy licensure was newly implemented. It is no longer necessary or appropriate.

Changes for only Chapter 60 – Licensed substance abuse treatment practitioners

Where appropriate, the term “addiction counseling” has been added to “substance abuse treatment.”

Licensure by endorsement

- Elimination of the requirement that the license held by an applicant in another jurisdiction was obtained by meeting requirements substantially equivalent to those in this chapter to facilitate portability of licenses into Virginia.
- Addition of allowance for a person with another mental health license in Virginia to apply for licensure by endorsement as well as an applicant from out of state.
- For consistency with other professions, requirement that the 24 months of experience in providing substance abuse treatment be within the past 60 months preceding application.
- For an applicant whose degree with not in substance abuse or addiction counseling, a reduction of the required experience from five years to two years.

Coursework requirements

- Acceptance of the Master Addictions Counselor certification as evidence of completing graduate hours specified in subsection C, relating specifically to substance use disorder.
- Elimination of acceptance of another mental health license as meeting the coursework requirements because amended regulation would allow such a licensee to be licensed by endorsement.

General examination requirements

- The waiver of the examination for applicants who hold a current license as a professional counselor will be eliminated. It is unnecessary for a LPC to obtain this license in order to practice substance abuse treatment or addiction counseling, but if he/she wants to be licensed in this specialty area, an examination is necessary to confirm competency.

Alternatives

Please describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. 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 regulatory change.

Since the requirements for licensure 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.

Periodic Review and Small Business Impact Review Announcement

This NOIRA is not being used to announce a periodic review or a small business impact review; this NOIRA is the result of the Board's periodic review.

Public Participation

Please indicate how the public should contact the agency to submit comments on this regulation, including ideas to assist the agency in the development of the regulation 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 regulation.

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.