



Virginia
Regulatory
Town Hall

Final Regulation Agency Background Document

Agency Name:	Board of Counseling, Department of Health Professions
VAC Chapter Number:	18 VAC 115-60-10 et seq.
Regulation Title:	Regulations Governing the Practice of Licensed Substance Abuse Treatment Professionals
Action Title:	Time-Limited Waiver of Certain Requirements
Date:	10/2/2002

Please refer to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99), and the *Virginia Register Form, Style and Procedure Manual* for more information and other materials required to be submitted in the final regulatory action package.

Summary

Please provide a brief summary of the new regulation, amendments to an existing regulation, or the regulation being repealed. There is no need to state each provision or amendment; instead give a summary of the regulatory action. If applicable, generally describe the existing regulation. Do not restate the regulation or the purpose and intent of the regulation in the summary. Rather, alert the reader to all substantive matters or changes contained in the proposed new regulation, amendments to an existing regulation, or the regulation being repealed. Please briefly and generally summarize any substantive changes made since the proposed action was published.

The Board is proposing a one-year waiver of the licensure requirements in the current regulations for individuals who hold certain combinations of education and work experience in substance abuse. This is in compliance with a statutory mandate that the Board provide for a time period of not less than one year whereby individuals who possess qualifications, education or experience acceptable to the Board will be granted the license.

Changes Made Since the Proposed Stage

Please detail any changes, other than strictly editorial changes, made to the text of the proposed regulation since its publication. Please provide citations of the sections of the proposed regulation that have been altered since the proposed stage and a statement of the purpose of each change.

There have been no changes.

Statement of Final Agency Action

Please provide a statement of the final action taken by the agency: including the date the action was taken, the name of the agency taking the action, and the title of the regulation.

On August 22, 2002, the Board of Counseling adopted final amendments to 18 VAC 115-20-10 et seq., Regulations Governing the Practice of Licensed Substance Abuse Treatment Professionals, in order to implement statutory requirements of §54.1-3508 of the Code of Virginia.

Basis

Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority, shall be provided. If the final text differs from that of the proposed, please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the final regulation and that it comports with applicable state and/or federal law

18 VAC 115-60-10 et seq. was promulgated under the general authority of Title 54.1 of the Code of Virginia.

Chapter 24 establishes the general powers and duties of health regulatory boards including the responsibility to promulgate regulations, levy fees, administer a licensure and renewal program, and discipline regulated professionals.

§ 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.*
4. *To establish schedules for renewals of registration, certification and licensure.*
5. *To levy and collect fees for application processing, examination, registration, certification or licensure and renewal that are sufficient to cover all expenses for the administration and operation of the Department of Health Professions, the Board of Health Professions and the health regulatory boards.*
6. *To promulgate regulations in accordance with the Administrative Process Act (§ 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 and Chapter 25 of this title.*
7. *To revoke, suspend, restrict, or refuse to issue or renew a registration, certificate or license which such board has authority to issue for causes enumerated in applicable law and regulations.*
8. *To appoint designees from their membership or immediate staff to coordinate with the Intervention Program Committee and to implement, as is necessary, the provisions of Chapter 25.1 (§ 54.1-2515 et seq.) of this title. Each health regulatory board shall appoint one such designee.*
9. *To take appropriate disciplinary action for violations of applicable law and regulations.*
10. *To appoint a special conference committee, composed of not less than two members of a health regulatory board, to act in accordance with § 9-6.14:11 upon receipt of information that a practitioner of the appropriate board may be subject to disciplinary action. The special conference committee may (i) exonerate the practitioner; (ii) reinstate the practitioner; (iii) place the practitioner on probation with such terms as it may deem appropriate; (iv) reprimand the practitioner; (v) modify a previous order; and (vi) impose a monetary penalty pursuant to § 54.1-2401. The order of the special conference committee shall become final thirty days after service of the order unless a written request to the board for a hearing is received within such time. If service of the decision to a party is accomplished by mail, three days shall be added to the thirty-day period. Upon receiving a timely written request for a hearing, the board or a panel of the board shall then proceed with a hearing as provided in § 9-6.14:12, and the action of the committee shall be vacated. This subdivision shall not be construed to affect the authority or procedures of the Boards of Medicine and Nursing pursuant to §§ 54.1-2919 and 54.1-3010.*
11. *To convene, at their discretion, a panel consisting of at least five board members or, if a quorum of the board is less than five members, consisting of a quorum of the members to conduct formal proceedings pursuant to § 9-6.14:12, decide the case, and issue a final agency case decision. Any decision rendered by majority vote of such panel shall have the*

same effect as if made by the full board and shall be subject to court review in accordance with the Administrative Process Act. No member who participates in an informal proceeding conducted in accordance with § 9-6.14:11 shall serve on a panel conducting formal proceedings pursuant to § 9-6.14:12 to consider the same matter.

12. *To issue inactive licenses and certificates and promulgate regulations to carry out such purpose. Such regulations shall include, but not be limited to, the qualifications, renewal fees, and conditions for reactivation of such licenses or certificates.*

§ 54.1-3508 specifically mandates that the Board establish a time-limited provision for licensure of individuals who do not meet the requirements in current regulation, but have qualifications that are “acceptable” to the Board.

§ 54.1-3508. Licensure of certain persons possessing substantially equivalent qualifications, education or experience. -- Notwithstanding the provisions of § 54.1-3507, (i) the Board may issue a license as a licensed substance abuse treatment practitioner to a person who, after the effective date of the regulations promulgated pursuant to subdivision 7 of § 54.1-3505, has applied for such a license and who, in the judgment of the Board, possesses qualifications, education or experience substantially equivalent to the requirements of § 54.1-3507; however, any such applicant shall have completed at least one year of supervised clinical experience in substance abuse treatment, and (ii) for a period of time to be determined by the Board but not less than one year after the effective date of the regulations, the Board shall issue such a license to any such person who, in the judgment of the Board, possesses qualifications, education or experience acceptable to the Board and has completed at least one year of supervised clinical experience in substance abuse treatment.

The Assistant Attorney General who provides counsel to the Board of Counseling has provided a letter of assurance that the amended regulations are consistent with statutory law.

Purpose

Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the final regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.

The Board has developed a time-limited provision for licensure of individuals who do not meet all of the licensure requirements, to be compliant with the legislative mandate. In developing these requirements, the Board has taken into consideration the kinds of education and experiences that will protect the public health and safety by conferring competency for independent practice, which includes the ability to identify psychological and emotional problems, which coexist with the substance abuse, and appropriately refer clients for treatment of

these problems. A considerable amount of public comment received during development of the new regulations addressed the fact that formal educational opportunities in this emerging profession have been scarce, and many of the most highly skilled counselors gained their knowledge from a combination of courses, workshops, seminars and independent study. In an effort to be inclusive of professionals who have obtained their training from a wide variety of sources, the Board developed combinations of education and experience which it feels provide equivalent training for competent independent practice.

In order to implement the mandate of § 54.1-3508, the Board established regulation setting forth criteria that it would consider acceptable for granting licensure to individuals which will authorize them to provide substance abuse treatment services independently. The Board established the current education and experience requirements based on what it determined were the minimum requirements to ensure safe and competent independent practice to protect the health and safety of the clients using the services of these practitioners. The mandate challenged the Board to develop additional avenues for licensure, which will ensure the same level of competence as the current regulation and afford the same protection to the public engaging the services of licensees.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement of the regulatory action's detail.

The Board has adopted a new section to regulation that will establish two alternative combinations of education and work experience in substance abuse, which will qualify individuals for licensure during a one-year period. Individuals in all categories will have to hold a current Virginia certification in substance abuse in good standing, pass a board approved examination in substance abuse, and submit comprehensive reports from three licensed mental health professionals, one of which must be licensed in Virginia affirming competence in all areas of practice. The Board has amended existing sections to cover licensure renewal and late renewal.

Issues

Please provide a statement identifying the issues associated with the final regulatory action. The term "issues" means: 1) the advantages and disadvantages to the public of implementing the new provisions; 2) the advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please include a sentence to that effect.

Advantages to applicants:

Qualified individuals who have spent many years in the substance abuse treatment profession, but find attainment of a master's degree with 60 graduate hours unfeasible, will have an avenue to obtain the license. Licensure will grant these individuals the authority to practice independently, which they cannot currently do with the certification. Licensure will open more job opportunities in the public and private sector where licensure is required.

Disadvantages to applicants:

There will be no disadvantages to potential applicants. Some individuals who already hold licenses under the Board have submitted comment that the waiver would reduce the integrity of the license and impact third party payments, but the Board cannot predict how third party payors will respond to requests for payments by those licensed under the waiver.

Advantages to the public:

There will be a greater availability of licensed therapists with expertise in substance abuse treatment who can offer services in both the public and private sectors. Since settings exempt from licensure requirements (primarily government and non-profit agencies) are increasingly requiring licensure for their staff in order to obtain third party payments, there will be a greater pool of individuals trained in substance abuse that they may consider hiring to provide substance abuse treatment services.

Disadvantages to the public:

There will be no disadvantages to the public:

Advantages or disadvantages to government agencies:

Agencies who now hire other licensed professionals, but might want someone with more substance-abuse specific experience, will have a larger group of individuals to choose from.

Public Comment

Please summarize all public comment received during the public comment period and provide the agency response. If no public comment was received, please include a statement indicating that fact.

The Virginia Board of Counseling accepted comments pursuant to a Notice of Public Comment that was published in the Virginia Registrar on May 20, 2002, Volume 18 Issue 18. Comments were accepted from the publish date through July 17, 2002. The purpose of the proposed action is to:

Comply with a legislative mandate to develop a provision for licensure of individuals who meet requirements which are "substantially equivalent" to those in regulation. The

Board is proposing a time-limited option for individuals with various combinations of substance abuse education and experience.

A summary of the written comment is provided as follows:

The Board received nine emails during the period between May 20, 2002 and July 17, 2002 regarding this issue. In addition, three responses were left on the “Public Comment Forum” site on the Virginia Townhall (www.townhall.state.va.us).

Individuals associated with the Fairfax, Falls Church Community Service Board, sent the six emails that were received. Five of the individuals express disappointment with the proposed regulations. Several still referred the third tier that had been included with a previous regulatory effort. They unanimously expressed concern that “there are many people in the field who have been working in residential/outpatient/prevention/dual diagnosis etc. for a number of years and who are state certified but have neither a 4-year or masters level degree.” One commenter stated that by denying licensure (via grandfathering) to group of individuals previously mentioned it would “gravely affect the quality of care of our clients and professional knowledge underserved in this profession”.

Board Response: In reference to the ability for individuals who have been working in the field to obtain licensure via the waiver:

By developing a two-tiered system, the Board of Counseling has developed a path for individuals who have minimal academic training but substantial experience to take advantage of the time limited waiver provision and still meet the guideline of “substantially equivalent” as set forth in statute.

While the Board recognizes the value of experience in the substance abuse field, it has an obligation to grant licensure to persons who are qualified to practice independently on a par with other licensed mental health professionals and who have the knowledge and expertise necessary to recognize the dual diagnoses most characteristic of persons with substance abuse issues. Therefore, the Board determined that a licensed practitioner must have graduate course work in counseling and substance abuse in order to be qualified to address a variety of mental health issues. Counselors in substance abuse may have acquaintance with mental health diagnoses but have worked under the supervision of a licensed practitioner.

CSAC’s currently working in Community Service Boards who may not qualify for licensure should not be affected in their work with clients. They will continue to have the ability to give the same counseling services they currently provide. What they will be unable to do is establish an independent practice for the treatment of patients with substance abuse and other mental health issues.

There was one commenter who felt that the two tiers for the waiver were appropriate. And also applauded “the Board’s persistence in working on this licensure and ensuring that when an

individual has this credential he/she will be seen by other professionals and professional organizations as truly meeting professional standards.”

Board response: The Board concurs with the comment. As a licensed professional, the LSATP must have credentials necessary to diagnosis and treat patients as independent practitioners. Once licensed, the public will not know whether a LSATP has been “grandfathered” or licensed with a 60-hour master’s degree and supervised practical experience. Protection of the public requires the Board to assure minimal competency for each person it licenses; the public should be able to rely on the qualifications and knowledge of a licensee.

Of the remaining three emails, one was from a certified substance abuse counselor who was "very supportive of the time limited waiver for LSAP."

Board response: The Board concurs with the comment.

A second was from a Licensed Professional Counselor and former Certified Substance Abuse Counselor (Vermont) who believed "there should be exceptions for length of substance abuse treatment experience, academic training to the doctoral level, and being a licensed professional counselor." However, it should be pointed out that this letter specifically addressed the specific situation of the individual making the comments and did not address the merits or shortcomings of the proposed regulations.

Board Response: Individuals who already have another license did not need the time-limited waiver because if they are licensed by this Board as either LPC’s or LMFT’s, they are exempt by law from needing to obtain the LSAPT in order to practice substance abuse counseling as long as they can document training and supervision to practice in this area. Also, regulations for endorsement recognize any mental health license in good standing in a category acceptable to the board which required completion of a master’s degree in mental health to include 60 graduate semester hours in mental health.

A third commenter, a CSAC, repeated a concern of whether education is more important than the clinical skills and knowledge acquired by current professionals who have been regulated as CSAC's for numerous years. And who have countless CEU's in ongoing substance abuse training and who could not meet the educational requirements because no formal academic programs for our profession existed. This commenter stated that she was "appalled at the apparent disregard for those of us that have faithfully served our consumers and will be kicked out of the loop by the current LSATP grandfathering regulations.”

Board Response: While continuing education in substance abuse may be beneficial, there is no accreditation of that education and no assurance that it meets the same quality and objectives of a formal academic program. The Board has received extensive comment from persons on all sides of the “grandfathering” issue, before and during the development of the NOIRA and proposed regulation. It has not disregarded the positions of any of the commenters but differs with some of the opinions expressed.

Also, no one certified as a substance abuse counselor will be denied the opportunity to continue practicing because they do not qualify for licensure. They will continue to provide the same services they currently provide and will also have responsibility for supervising counseling assistants.

The three people who commented on the Virginia Townhall Website all expressed concern that the proposed regulations were “burdensome and restrictive.” All expressed concern that “the proposal seeks to base waivers almost entirely on academic achievements,” while “many, if not most of the front line substance abuse treatment providers have gained their knowledge and skills through a variety of hands on, CEU, OHT personal experience, and a mentored/supervised practicum.”

Board Response: In reference to the question of the perceived requirement of too much academic preparation as opposed to experiential preparation:

The task before the Board of Counseling was to develop a time limited waiver that met the standard of being “substantially equivalent” in both academic and experience hours to the regular licensure requirement. After many long discussions and significant comment from many interested groups, the Board of Counseling has developed a waiver regulation that provides for competent licensees and public protection.

In § 54.1-3507, the Code of Virginia states that “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”. Therefore, the Board did not agree that “substantially equivalent” education or experience could be stated as continuing education hours and/or years of experience in substance abuse.

A summary of the public hearing is provided as follows:

A VAADAC representative spoke on behalf of himself. The commenter stated that he had concerns over all about the licensure versus time-limited waiver issue. He said that he was in favor of the original agreement between the Board and VAADAC. He referred to the agreement as the “Gold Standard,” whereby CSAC designation along with the appropriate continuing education coursework would qualify a person for the LSATP. Many current Substance Abuse Counselors have been taking continuing education course since 1989, mainly because during the period since that time there were few real substance abuse courses or programs. In that there were few courses available in the past, the Board should accept previously taken substance abuse continuing education coursework in lieu of any current requirements for academic coursework. The commenter pointed out that he has:

- Over sixteen years experience in substance abuse counseling;
- A master’s degree
- Numerous hours of substance abuse related continuing education credit;
- Certification as a Detox Specialist and trainer;
- Certification as an Aids Specialist and trainer;

- Certification as a facilitator.

Yet based on the requirements set out in the proposed regulations he doesn't qualify for licensure under the time-limited waiver. To which he said, "He doesn't think it's fair."

Board Response:

Since the commenter already holds a master's degree, the Board can only presume that the degree is in a totally unrelated field. If the degree were in a mental health field, the person would be qualified for the LSATP or would likely already hold a license as a professional counselor, social worker or psychologist. While graduate credit hours in substance abuse were difficult to obtain in the past, there are now courses available in at least 15 colleges and universities in Virginia. Fifteen of the 36 required graduate hours are related to general mental health counseling, psychotherapy, diagnosis, group work and research, and those hours have been readily obtainable.

Verification of course content for graduate hours would be by the same standard applied to other licensed professionals. If not apparent from the course title, the applicant would need to provide some evidence that the courses contained the core areas of knowledge. Course hours can be verified by transcripts, but the applicant may also provide additional evidence, such as textbooks, course notes, catalogue descriptions, or letters from faculty, to verify that required subject matter was covered in a course.

A licensed professional counselor stated that she was opposed to the time-limited waiver as a matter of public protection. She stated that for these people to be credible there must be adequate standards to insure competency. In her position with Du Pont, she makes many referrals for substance abuse treatment therefore she is familiar with level of competence of persons who will qualify for this license. As such she does not believe the people practicing will have the credentials and education to practice independently. She also said that he believed that there was a lack of appropriate training in business ethics and in running a solo practice where there had been no formal clinical supervision prior to licensure.

Board Response: While the Board appreciates the concern about licensing individuals with lesser educational credentials and clinical supervision, it does believe that years of experience in substance abuse under the supervision of a licensed practitioner combined with graduate hours in counseling and substance abuse will provide sufficient evidence of minimal competency.

A licensed professional counselor and member of several professional associations spoke on behalf of the Virginia Association of Alcoholism and Drug Abuse Counselor (VAADAC) in support of the waiver. The commenter reiterated VAADAC's position that the Board be responsive to the substance abuse field in its consideration of regulations for grandfathering individuals into the Licensed Substance Abuse Treatment Practitioner credential.

The commenter stated that it is the position of VAADAC that proposed time-limited waiver language is "overly restrictive," "overly academic," and "does not adequately take into account knowledge gained in the workplace." Further, he reiterated that when many of these people entered the profession there were not graduate level academic courses available, "especially

those of high quality”. Training at best was only available through seminars, workshops, conferences, and continuing education programs. Therefore, the learning that was received on the job is very significant.

In regard to the options set out in the language, VAADAC is “philosophically okay with Option 1.” There is “disagreement with Option 2,” in that VAADAC feels that the 30-course hour requirement is “really unnecessary.” Also, the seven courses had not been part of the original discussion. He said that VAADAC continues to believe that real work at 2080 hours per year should be more important than 30 hours spent in a classroom.

Board response: The Board response is the same as expressed for other comments – continuing education may be valuable for practice but is not a substitute for graduate education. These persons will be licensed practitioners with the ability to independently see patients who have multiple mental health issues. Those patients should have the assurance that the licensee has a basic core of knowledge in evaluation, diagnosis, psychotherapy, and counseling – as well as a working knowledge of the assessment and treatment of substance abuse.

The commenter refers to an earlier working draft that set forth three general areas of knowledge for graduate courses. In evaluating the education necessary to practice as an independent licensee, those general areas were judged insufficient. For example, since LSATP’s will have responsibility for supervising the activities of CSAC’s and the Assistants, they need to have education in group counseling and psychotherapy. They also need to know the basics of research in order to be able to keep up with changing theories and treatment options. The original mental health content for graduate hours contained no hours directed to the assessment, understanding and treatment of substance abuse, which the Board regarded as crucial to licensure in that field.

In its Economic Impact Analysis, the Department of Planning and Budget commented that the requirement for a person to have certification as a substance abuse counselor was overly burdensome.

Board response: The Board noted that throughout the lengthy and contentious debate on the time-limited waiver or grandfathering provisions, there has been no comment from the public in opposition to or questioning the need for such a requirement. Since the Board is reducing the education and clinical practice requirements for individuals with years of experience, it is reasonable to require that there be a history of board oversight and that some of that experience be under the supervision of a licensed practitioner. If a person is seeking licensure through the current requirements, they are required to have completed a 4,000 hour supervised residency in substance abuse treatment. By requiring the CSAC, the Board can be assured that some or all of the years of practice required for the time-limited waiver has been obtained under supervision, as would be the case in a supervised residency.

In addition, the standard for practice in all private and most public setting has been the CSAC. The Department of Juvenile Justice and the Juvenile and Adult Court Services

require their counselors to hold the CSAC. Most counselors who work in the Community Service Boards also have the CSAC, because the agencies have strongly encouraged their counselors to obtain that credential as evidence of their ability to work with substance abuse clients. Therefore, the Board believes the requirement is not burdensome and will provide additional assurance of competency and safety to the public.

Detail of Changes

Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or crosswalk - of changes implemented by the proposed regulatory action. Include citations to the specific sections of an existing regulation being amended and explain the consequences of the changes.

18 VAC 115-60-55. Time-limited waiver of certain licensure requirements.

A new section is added to permit individuals with certain qualifications to apply for licensure for a period of one year following the effective date of the regulations. All applicants seeking the waiver of certain requirements would be required to pass an examination as specified by the Board, hold current certification as a substance abuse counselor for the Board, and submit three comprehensive reports from licensed mental health professionals affirming competence in areas of knowledge and in the applicant's ability to practice independently.

In addition, there are specific requirements for years of experience, which may be combined with hours of graduate education in a mental health field. Persons with a master's degree in a mental health field may be licensed with five years of experience and 36 graduate hours in a mental-health field with certain course work; and persons with a bachelor's degree may be licensed with 10 years of experience and 30 graduate hours in a mental-health field with certain course work.

Family Impact Statement

Please provide an analysis of the regulatory action that assesses the impact on the institution of the family and family stability including the extent to which the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

The changes will have no effect on the authority or rights of parents in the education, nurturing and supervision of their children. Increased accessibility to licensed substance abuse treatment practitioners may help individuals suffering from an addiction achieve and maintain economic self-sufficiency and self pride and assume responsibility. This may also strengthen the marital commitment for individuals or their spouses who need substance abuse services. The application and examination fees will impact individuals who are obtaining the license for the first time, but are not likely to discourage those who want to hold the license and use the title.