



Virginia  
Regulatory  
Town Hall

## Final Regulation Agency Background Document

<b>Agency Name:</b>	Department of Health Professions, Board of Licensed Professional Counselors, Marriage and Family Therapists and Substance Abuse Professionals
<b>VAC Chapter Number:</b>	18 VAC 115-20-10 et seq.
<b>Regulation Title:</b>	Regulations Governing the Practice of Professional Counseling
<b>Action Title:</b>	Amendments Pursuant to Executive Order 15 (94)
<b>Date:</b>	

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*Please provide a brief summary of the new regulation, amendments to an existing regulation, or the regulation being repealed.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or changes contained in the proposed new regulation, amendments to an existing regulation, or the regulation being repealed.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.*

Amendments to Regulations Governing the Practice of Professional Counseling, 18 VAC 115-20-10 et seq., establish an endorsement procedure for individuals with lengthy practice in other states. The amendments also update the education requirements based on national accreditation standards, and provide for automatic recognition of graduate programs accredited by the two national accrediting bodies for counseling programs. To accommodate students currently enrolled in a degree program, the Board has delayed the effective date for the new coursework until April 12, 2002. To reduce the burden of the residency requirement on applicants, the Board will now accept group supervision hours as equivalent to individual hours for up to half of the total supervised hours. Two new licensure titles have been added for acceptable supervisors, graduate internship hours meeting certain criteria may be counted toward the residency, the face-to face supervision requirement is changed from 1 hour per week to 1 hour per 20 hours of work

experience. The amendments specify that 2000 client contact hours be accrued during the 4000 hour residency, in response to frequent requests from applicants for guidance on the expectations of the Board. To reduce the financial burden on individuals who wish to renew a license which has lapsed for more than four years, a reapplication alternative to the current cumulative renewal and penalty fee requirement is established. The dual relationship prohibition in the Standards of Practice is amended to specify that sexual relationships with a client are strictly prohibited for five years following the cessation of services. The amendments also include general reformatting of the regulations, eliminating obsolete and unnecessary language, and including new language where needed to clarify requirements.

### 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.*

Changes to sections 20, 100, 110 and 150 that were published as proposed regulations on September 27, 1999 do not appear in the final regulation because they have been incorporated with a fee change that will be published as final regulation in the same volume and issue as this regulation. Minor amendments to section 40 are made to conform the language to the fee change that will become effective on the same day.

### 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 February 18, 2000, the Board of Licensed Professional Counselors, Marriage and Family Therapists and Substance Abuse Professionals adopted final regulations 18 VAC 115-20-10 et seq., Regulations Governing the Practice of Professional Counseling, completing changes pursuant to Executive Order 15 (94) which update the education requirement, establish an endorsement provision for individuals licensed in other states by equivalent requirements, reduce the burden of the residency requirement, and clarify and simplify the regulations.

### 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*

Section 54.1-2400 establishes duties of health regulatory boards to establish necessary qualifications for registration, certification or licensure to ensure the competence and integrity of regulated practitioners, to examine applicants, to establish renewal schedules, to administer fees to cover the administrative expenses of the regulatory program, and take disciplinary action for violations of law and regulations.

**§ 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 (§ 54.1-100 et seq.) and Chapter 25 (§ 54.1-2500 et seq.) 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 or 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 licenses or certificates.*

Section 54.1-3500 sets forth definitions for words and terms used in Chapter 35.

*§ 54.1-3500. Definitions*

*As used in this chapter, unless the context requires a different meaning:*

*"Appraisal activities" means the exercise of professional judgment based on observations and objective assessments of a client's behavior to evaluate current functioning, diagnose, and select appropriate treatment required to remediate identified problems or to make appropriate referrals.*

*"Board" means the Board of Licensed Professional Counselors, Marriage and Family Therapists, and Substance Abuse Professionals.*

*"Certified substance abuse counselor" means a person certified to provide substance abuse counseling in a state-approved public or private substance abuse program or facility.*

*"Counseling" means the therapeutic process of: (i) conducting assessments and diagnoses for the purpose of establishing treatment goals and objectives and (ii) planning, implementing, and evaluating treatment plans using treatment interventions to facilitate human development and to identify and remediate mental, emotional or behavioral disorders and associated distresses which interfere with mental health.*

*"Counseling treatment intervention" means those cognitive, affective, behavioral and systemic counseling strategies, techniques and methods common to the behavioral sciences that are specifically implemented in the context of a therapeutic relationship. Other treatment interventions include developmental counseling, guidance, and consulting to facilitate normal growth and development, including educational and career development.*

*"Licensed substance abuse treatment practitioner" means a person who: (i) is trained in and engages in the practice of substance abuse treatment with individuals or groups of individuals suffering from the effects of substance abuse or dependence, and in the prevention of substance abuse or dependence; and (ii) is licensed to provide advanced substance abuse treatment and independent, direct and unsupervised treatment to such individuals or groups of individuals, and to plan, evaluate, supervise, and direct substance abuse treatment provided by others.*

*"Marriage and family therapist" means a person trained in the assessment and treatment of cognitive, affective, or behavioral mental and emotional disorders within the context of marriage and family systems through the application of therapeutic and family systems theories and techniques.*

*"Marriage and family therapy" means the assessment and treatment of cognitive, affective, or behavioral mental and emotional disorders within the context of marriage and family systems through the application of therapeutic and family systems theories and techniques and delivery of services to individuals, couples, and families, singularly or in groups, for the purpose of treating such disorders.*

***"Practice of counseling" means rendering or offering to render to individuals, groups, organizations, or the general public any service involving the application of principles, methods or procedures of the counseling profession, which shall include appraisal, counseling, and referral activities.***

*"Practice of marriage and family therapy" means the assessment and treatment of cognitive, affective, or behavioral mental and emotional disorders within the context of marriage and family systems through the application of therapeutic and family systems theories and techniques, which shall include assessment, treatment, and referral activities.*

*"Practice of substance abuse treatment" means rendering or offering to render substance abuse treatment to individuals, groups, organizations, or the general public.*

***"Professional counselor" means a person trained in counseling interventions designed to facilitate an individual's achievement of human development goals and remediating mental, emotional, or behavioral disorders and associated distresses which interfere with mental health and development.***

*"Referral activities" means the evaluation of data to identify problems and to determine advisability of referral to other specialists.*

*"Substance abuse" and "substance dependence" mean a maladaptive pattern of substance use leading to clinically significant impairment or distress.*

*"Substance abuse treatment" means (i) the application of specific knowledge, skills, substance abuse treatment theory and substance abuse treatment techniques to define goals and develop a treatment plan of action regarding substance abuse or dependence prevention, education or treatment in the substance abuse or dependence recovery process and (ii) referrals to medical, social services, psychological, psychiatric or legal resources when such referrals are indicated.*

§ 54.1-3503 establishes the Board of Licensed Professional Counselors, Marriage and Family Therapists and Substance Abuse Professionals and authorizes the board to regulate the practice of counseling.

### **§ 54.1-3503. Board of Licensed Professional Counselors, Marriage and Family Therapists and Substance Abuse Treatment Professionals.**

*The Board of Licensed Professional Counselors, Marriage and Family Therapists, and Substance Abuse Treatment Professionals shall regulate the practice of counseling, substance abuse treatment, and marriage and family therapy.*

*The Board shall consist of fourteen members. Twelve shall be professionals licensed in Virginia, who shall represent the various specialties recognized in the profession, and two shall be citizen members. Of the twelve professional members, eight shall be professional counselors, two shall be marriage and family therapists, and two shall be licensed substance abuse treatment practitioners. The professional members of the Board shall include two full-time faculty members engaged in teaching counseling, substance abuse treatment or marriage and family therapy in an accredited college or university in this Commonwealth, and two professional counselors engaged in full-time private practice. However, the marriage and family therapists initially appointed to the Board shall not be required to be licensed, shall not be licensed by another board in the Department of Health Professions, and shall be clinical members of the American Association for Marriage and Family Therapy. The licensed substance abuse treatment practitioners initially appointed to the Board shall not be required to be licensed, shall not be licensed by*

*another board in the Department of Health Professions, shall be active members of the Virginia Association of Alcoholism and Drug Abuse Counselors and shall have a master's degree in substance abuse or a substantially equivalent master's degree.*

*The terms of the members of the Board shall be four years.*

§ 54.1-3505 mandates that the Board promulgate regulations for the voluntary certification of its licensees as sex offender treatment providers.

**§ 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:*

*1. To cooperate with and maintain a close liaison with other professional boards and the community to ensure that regulatory systems stay abreast of community and professional needs.*

*2. To conduct inspections to ensure that licensees conduct their practices in a competent manner and in conformance with the relevant regulations.*

*3. To designate specialties within the profession.*

*4. To administer the certification of rehabilitation providers pursuant to Article 2 (§ 54.1-3510 et seq.) of this chapter, including prescribing fees for application processing, examinations, certification and certification renewal.*

*5. (Effective until July 1, 1999) To promulgate regulations for the voluntary certification of licensees as sex offender treatment providers. In promulgating such regulations, the Board shall consider the standards recommended by the Advisory Committee on Certified Practices pursuant to § 54.1-3610. The provisions of this subdivision shall expire on July 1, 1999.*

*6. To promulgate regulations for the qualifications, education, and experience for licensure of marriage and family therapists. The requirements for clinical membership in the American Association for Marriage and Family Therapy (AAMFT), and the professional examination service's national marriage and family therapy examination may be considered by the Board in the promulgation of these regulations. The educational credit hour, clinical experience hour, and clinical supervision hour requirements for marriage and family therapists shall not be less than the educational credit hour, clinical experience hour, and clinical supervision hour requirements for professional counselors.*

*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. The requirements for membership in the National Association of Alcoholism and Drug Abuse Counselors and its national examination may be considered by the Board in the promulgation of these regulations. 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.*

§ 54.1-3506 establishes the licensure requirement to engage in the practice of counseling.

**§ 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; however, no license shall be required for the practice of marriage and family therapy or the independent practice of substance abuse treatment until six months after the effective date of regulations governing marriage and family therapy and substance abuse treatment, respectively, promulgated by the Board under subdivisions 6 and 7 of § 54.1-3505. The Board may issue a license, without examination, for the practice of marriage and family therapy or the independent practice of substance abuse treatment to persons who hold a current and unrestricted license as a professional counselor within the*

*Commonwealth and who meet the clinical and academic requirements for licensure as a marriage and family therapist or licensed substance abuse treatment practitioner, respectively. The applicant for such license shall present satisfactory evidence of qualifications equal to those required of applicants for licensure as marriage and family therapists or licensed substance abuse treatment practitioners, respectively, by examination in the Commonwealth.*

*Any person who renders substance abuse treatment services as defined in this chapter and who is not licensed to do so, other than a person who is exempt pursuant to § 54.1-3501, shall render such services only when he is (i) under the supervision and direction of a person licensed under this chapter who shall be responsible for the services performed by such unlicensed person, or (ii) in compliance with the regulations governing an organization or a facility licensed by the Department of Mental Health, Mental Retardation and Substance Abuse Services.*

The Board is authorized under § 54.1-103 to specify additional training or conditions for renewal of a license.

**§ 54.1-103. Additional training of regulated persons; reciprocity; endorsement.**

- A. *The regulatory boards within the Department of Professional and Occupational Regulation and the Department of Health Professions may promulgate regulations specifying additional training or conditions for individuals seeking certification or licensure, or for the renewal of certificates or licenses.*
- B. *The regulatory boards may enter into agreements with other jurisdictions for the recognition of certificates and licenses issued by other jurisdictions.*
- C. *The regulatory boards are authorized to promulgate regulations recognizing licenses or certificates issued by other states, the District of Columbia, or any territory or possession of the United States as full or partial fulfillment of qualifications for licensure or certification in the Commonwealth.*

The web address for the text of these statutes is <http://leg1.state.va.us>

## 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.*

Executive Order 15 stated that “shortcomings in prior rulemaking make essential the comprehensive review of all existing regulations” and directed all boards to ensure that regulations are clear, essential to protect the public health and safety, and constitute the least burdensome alternatives. The Board reviewed national standards for curriculum accreditation, model legislation developed by the American Counseling Association, considered staff comments regarding areas of the regulations that are confusing and considered public comment offered during the review process.

Article 2, Part V of the *Virginia Register Form, Style and Procedure Manual* recommends that **definitions** of important terms used more than once be included in the regulation to provide clarification and control over their meanings. Certain definitions pertaining to the practice of counseling are set forth in § 54.1-3500. The Board has eliminated definitions from the regulation that duplicate those listed in the *Code*, but included other terms that are important to the regulation

The Board determined that licensure by examination is not the least burdensome alternative for practitioners from other states licensed by standards substantially equivalent to the Board's, and has established an endorsement provision to relieve this burden. The Board also acknowledged that the residency requirement is overly burdensome for applicants in some areas of the state, and has made changes to help applicants obtain the required hours.

Regulations setting forth degree program requirements are frequently misunderstood by the public. This confusion could result in a wasted application fee, and frustration for individuals whose programs did not meet the requirements. amendments to degree program requirements provide clarification, and allow for automatic acceptance of nationally accredited programs.

Review of national program accreditation standards, and model legislation published by the American Counseling Association revealed that the course work requirement is outdated and does not adequately prepare students to practice counseling at the level the profession has evolved to over the past 20 years. The Board is charged with protecting the public by establishing requirements for licensure as necessary to ensure the competence and integrity of its licensees to engage in counseling practice. Individuals practicing counseling in the private sector are required by law to hold a license. These practitioners must be properly trained to safely work autonomously with clients at risk, such as mentally ill or emotionally disturbed individuals, or families with abuse problems. The Board has updated the core course requirements based on national standards, with a delayed effective date to accommodate individuals who are currently enrolled in a graduate program. Individuals who completed their 60 graduate hours prior to the effective date of the new rule may be licensed under the education requirements in effect when they completed their education.

The Board office receives frequent calls for clarification of regulations governing the use of professional title, billing and solicitation for services. The Board proposes new language to clarify and simplify these rules.

The Board resolved that its prohibition on dual relationships is excessive in relation to the standards set forth by the American Counseling Association and by other boards, and proposes a more reasonable alternative with a five year prohibition for sexual intimacies with clients, provided there is no client exploitation involved.

The Board also proposes general clarification and reformatting as needed, and removal of language that is unnecessary or conflicts with statute.

## 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.*

Changes to definitions eliminate terms which are obsolete or duplicate of statute, and add new terms as needed to provide clarification to the regulations.

A new provision for licensure by endorsement is established for individuals who have been licensed in other states by equivalent requirements.

The amendments update the education requirements based on current practice, public comment, and national accreditation standards. The Board proposes requiring completion of four new content areas within the existing 60 graduate hour requirement, and specifies internship clock hours and client contact hours. The proposed new requirements will have a delayed effective date to allow programs time to make curriculum changes and to accommodate students who will be close to completing their 60 hours at the time the new regulations take effect. A provision is also included to provide for acceptance of course work completed previously that may have met the regulations in effect at the time.

The residency requirement is amended to reduce the burden of the residency requirement on applicants. The Board will now accept group supervision hours as equivalent to individual hours for up to half of the total supervised hours. Two new licensure titles have been added for acceptable supervisors, graduate internship hours meeting certain criteria may be counted toward the residency, the face-to face supervision requirement is changed from 1 hour per week to 1 hour per 20 hours of work experience. The amendments specify that 2000 client contact hours be accrued during the 4000 hour residency, in response to frequent requests from applicants for guidance on the expectations of the Board.

The Board has established a requirement for two years of post-licensure clinical experience for individuals providing supervision to residents. The Board has rescinded the requirement for an annual evaluation reported to the Board, and replaced it with a 3-month evaluation presented to the resident. Because residents work under many supervisors, clarification is added that they must have at least one report of satisfactory competency in each area of the residency.

The Board has amended the Standards of Practice to clarify the regulations and improve their enforceability. Language that duplicates statute was struck and related subdivisions were combined where appropriate. New language for the prohibition on dual relationships is more consistent with the regulations of other boards, and the codes of ethics of professional associations.

Other changes were made to streamline and improve the format of the regulations, and remove obsolete or unnecessary language.

## 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.

### **Definitions.**

Several definitions in the regulations duplicate statute. The Board identified several terms used in the regulations which are not common usage words and are not defined, such as “*exempt setting*” and “*jurisdiction.*” Changes in terminology necessitate changing some definitions to conform with the rest of the chapter. The amendments reference the Code for definitions that duplicate statute.

Advantages: Referencing definitions in the *Code* and removing unnecessary definitions streamlines the regulations and eliminates duplication. Additionally, the regulations will remain in conformance with statute in the event statutory definitions are amended. Inclusion of definitions for the terms “*exempt setting,*” “*nonexempt setting,*” and “*jurisdiction*” help clarify these terms for individuals not familiar with them. Deletion of terms no longer used in the regulations and addition of new or terms makes this section consistent with the other sections in the regulations.

Disadvantages: The changes present no disadvantages to the general public, applicants, licensees, the Board or the agency.

### **Substance Abuse Counseling.**

*Regulations Governing the Certification of Substance Abuse Counseling* are not incorporated by reference in this chapter, as stated in 18 VAC 115-20-30. The amendments repeal this section.

Advantages: Removal of erroneous language prevents confusion.

Disadvantage: There is no disadvantage to removing this section.

### **Sex Offender Treatment Provider Certification**

Section 54.1-3505 of the *Code of Virginia* mandates that the Board promulgate regulations for the voluntary certification of its licensees as sex offender treatment providers, and to consider the standards recommended by the Advisory Committee on Certified Practices pursuant to §54.1-3610. The Board has considered those standards, which are now the Board of Psychology’s *Regulations Governing the Certification of Sex Offender Treatment Providers*, and has determined that those standards are acceptable for the voluntary certification of its licensees. Following the advise of the Attorney General’s Office, the Board has included this section to direct its licensees seeking certification to the Board of Psychology.

Advantages: Promulgation of a separate set of regulations that are either incongruous with or a duplication of the Board of Psychology’s regulations would be a poor use of the Board’s time and budget, and confusing to the public. Endorsement of the existing regulations allows for one set of requirements and practice standards for all certificate holders.

Disadvantages: There is no disadvantage to the proposed change.

#### **Pre-requisites for licensure by examination**

Reference letters do not provide useful information to supplement the supervisory evaluations. The Board has rescinded the reference letter requirement, and making minor changes to clarify the documentation requirements.

Advantages: The change simplifies the application process.

Disadvantages: There are no disadvantages to the changes.

#### **Pre-requisites for licensure by endorsement**

Currently, applicants with lengthy experience as licensed practitioners in other jurisdictions must document the same information as new practitioners, which includes official documentation of supervised practice that may have taken place long ago and is therefore difficult or impossible to verify. In addition, experienced practitioners are required to sit for the Board's examination, which may be comparable to the original examination taken for licensure in another jurisdiction. The Board determined that a provision should be developed for licensure of experienced practitioners by endorsement.

Advantages: Endorsement of experienced practitioners will expedite the licensure process for these applicants by as many as 10 months, reducing delays in the ability to obtain employment, open private practices and bill for services.

Disadvantages: The changes present no disadvantages to applicants, the agency, or the general public.

#### **Degree program requirements.**

Among the most frequent requests for clarification from the public is the meaning of "a degree in counseling *or a related discipline.*" Many individuals who graduate from seminary schools or criminal justice programs believe that they may be eligible for licensure because their programs included a few courses in dealing with mental, emotional or behavioral problems. The Board has clarified the program requirement by defining it in terms of the scope of practice set forth in the *Code of Virginia* rather than by title, and to include descriptive language setting forth criteria for what constitutes a "program" in counseling according to national standards.

Also at issue is the amount of time spent by the credentials reviewers in determining the acceptability of an applicant's graduate program. The Board has established automatic acceptance of programs approved by the Council for Accreditation of Counseling and Related Educational Programs (CACREP) or the Council on Rehabilitation Education (CORE), which will expedite the review process for applicants from those programs.

Advantages: The program requirements outline in clear terms what the Board expects applicants to document in terms of a graduate degree in counseling. Automatic acceptance of programs approved

by national accrediting organizations simplifies the review process and expedites the application process for individuals who graduate from nationally accredited programs in counseling.

Disadvantages: No changes are have been made to the actual degree program requirements, so there are no disadvantages.

### **Course work requirements.**

The Board has not updated its course requirements in 20 years. Over that time, the profession has evolved, and graduate programs in counseling are providing more extensive training to prepare counselors for independent clinical practice. The Board determined that the core areas need revision to more closely resemble current practice requirements. The Board reviewed the program requirements of the two national accrediting bodies for programs in counseling (CACREP and CORE), and model legislation for regulation of the profession developed by the American Counseling Association, considered public comment offered at its meetings, and conducted a survey of Virginia's graduate counseling programs to determine the availability of proposed course work. Based on the review and comment and survey results, the Board determined that the regulations should specify a minimum internship hour requirement of 600 clock hours with 240 hours of direct client contact, and that the course requirement fell short of the national standard in four content areas: addictive disorders, marriage and family systems theory, multicultural counseling and research. The Board also determined that theories of human behavior are separate knowledge domains offered as distinct courses at most institutions of higher education.

Board members in private practice estimated that 25-30% of their clients have some type of addictive disorder or have a family member with an addictive disorder. Based on the extent of this problem in our society, and the importance of being able to recognize the warning signs to appropriately refer clients for substance abuse treatment, the Board amended the regulations to require one course in addictive disorders. All but one counseling program responding to the Board's survey indicated that a distinct course in addictions is available. The one program that did not offer a distinct course felt that 3 semester hours in addictions could be obtained over several courses.

The Board members agreed that without exception, client problems do not originate or exist in isolation, but stem from and involve family, societal or organizational systems. National standards reflect that training in both the individual and systems perspectives is considered essential for minimal competence in the practice of counseling. Although systems theory and techniques are founded on a vast body of knowledge that cannot be covered in one course, the Board determined that at minimum, one course should be required to make students aware of this significant counseling perspective. All but one counseling program responding to the Board's survey indicated that a course in marriage and family systems theory is available. It is known that the institution housing that program has a distinct marriage and family therapy program where the course could be obtained.

Because counselors test and diagnose clients across the entire span of gender, age, race, religion and ethnicity, the Board determined that it is essential that counselors be aware of how social and cultural factors can affect a client's test results, behavior and thinking. Without cultural awareness, a practitioner may misdiagnose a cultural behavior as a mental, emotional or behavioral problem.

The Board has amended the regulations to require one course in multicultural counseling, theories and techniques. All but one counseling program responding to the Board's survey indicated that a distinct course in multicultural counseling is available. The one program that did not offer a distinct course felt that 3 semester hours in this content area could be obtained from a combination of different courses.

The Board's standards of practice require that counselors stay abreast of new developments, concepts and practices. In order to do this, counselors must be able to interpret scholarly published articles and evaluate the significance of the reported results. The importance of this training is evident in the fact that it is a fundamental component of the graduate counseling curricula in almost all university programs. All counseling programs responding to the Board's survey indicated that a research course is available.

Another issue pertaining to the course work requirements is the lack of specificity in the semester hours required in each content area. Under the current regulations, one applicant may cover more than one content area with one course, while another may submit documentation of a specific course to each area, which results in disparate training for individuals obtaining the same license, and makes the determination of competency somewhat subjective. The Board has established that each content area be covered by one 3 semester hour course, which is a more consistent and defensible requirement.

None of the changes affect the 60 graduate hour requirement.

Advantages: The changes bring the course work requirement up-to-date in terms of the national standard for the profession. Survey responses substantiate that these courses are considered standard by Virginia's institutions of higher learning. Since all core areas are covered on the licensure examination which is based on a job analysis of the profession, applicants will be better prepared to pass the licensure examination with a strong foundation in all core areas.

Disadvantages: The changes limit the number of elective courses students can take within the 60 graduate hour requirement, but do not change the total number of hours required. The Board has ensured that there will be no disadvantages to individuals who complete their education prior to the effective date of the change by providing for acceptance of education that meets the regulations in effect at the time the coursework was completed. The Board has also included a 2 year delay for the effective date of the new requirements to allow programs to develop courses if needed, and to enable individuals enrolling in counseling programs to plan their curricula to meet the new requirements.

### **Residency**

The primary issue for the supervised experience requirement is the difficulty for new graduates to find residency positions. Historically, government agencies were a principal source of training for new graduates, but a recent trend for these agencies is to require licensure as a hiring criterion to enable third party billing to offset budget cuts. The Board considered reducing the residency hours, but this was met by strong opposition from the public. The Board identified other ways to facilitate attainment of residency hours as listed under "Substance."

Due to frequent requests from applicants for guidelines on the number of client contact hours required for the residency, the Board established a requirement of 2000 hours of face-to-face client contact. This meets the expectation of most work settings that clinicians spend 50% of their time in direct service.

Another issue with the experience requirement is frequent confusion about residents' use of professional titles, solicitation of clients and billing for services. The Board has removed the prohibition on client solicitation since supervisors are not always in a situation to find clients for the residents. The Board has also clarified that a resident cannot be paid directly by a client or third party payor, which does not prohibit the practice from billing for a resident's services and paying the resident a salary. The Board also clarified use of title and proper notification of the residency status and supervisor information to the client.

During the review of the regulations, several Board members expressed concern that the requirement that supervisors have "professional training in supervision." is ambiguous. Members who had served on the Board's Disciplinary Committee regarded inadequate supervision as the source of some of the disciplinary problems that have come before the Board. The Board identified a need to establish specific requirements for supervisory training, but currently does not have statutory authority to do so. To provide some assurance of competency to supervise, the Board has established a requirement that supervisors have 2 years post-licensure clinical experience.

Another issue the Board considered during its review of the supervision requirements is that most residents have multiple supervisors over the period of the residency, and often do not receive annual evaluations. Because this review was intended to provide a means for residents to get feedback on their performance prior to the completion of their supervision contract, the Board has changed this to a quarterly evaluation submitted to the resident, to be included with the application packet at the completion of the residency.

The Board has reformatted this section, deleting unnecessary language and changing language to clarify the requirements when needed.

Advantages: Changes in the residency hours will reduce the time spent in the residency by up to 6 months, reducing the cost incurred by residents for supervision, and expediting the licensure process. Changing the minimum supervision hours from one hour per week to one hour per 20 hours will reduce the burden on part-time residents who have difficulty obtaining frequent sessions with their supervisors which are sometimes paid for by the residents at the going rate for client visits. Clarification of ambiguous language on client contact hours, billing and solicitation should be helpful to both applicants and supervisors.

Disadvantages: Individuals in full-time residencies will not be permitted to obtain less than two hours of face-to-face supervision each week (current regulations require a minimum of one hour per week). However, full-time residents generally obtain two hours of supervision each week in order to complete the requirement within two years ( 40 hours per week X 50 work weeks per year X 2 years = 4000 hours of work experience. It takes 2 hours of face-to face supervision each week to complete 200 hours within the 2 years). The change to accept group supervision as equivalent to

face-to-face will make it easier for full time residents to meet the requirement, as they generally have 1 hour of group staff meetings each week.

New licensees will have to wait two years until they are able to act as supervisors, but the impact on applicants will be minimal, as supervision by new licensees is extremely rare (<1% of applications received).

### **Character and Professional Integrity**

At issue is the potential for conflict with the Americans with Disabilities Act, which prohibits denial of a government service (i.e. licensure) based on a disability. This section has been repealed.

Advantages: Repeal of this language eliminates conflict with federal law.

Disadvantages: There are no disadvantages.

### **Examination Requirements.**

Examination requirements under the current regulations are set forth under three sections which can be reduced and consolidated by eliminating language that is unnecessary.

Advantages: Elimination of unnecessary language makes the regulations more concise.

Disadvantages: There are no disadvantages to the changes.

### **Standards of Practice**

The primary issue in the Standards of Practice which the Board addressed was the prohibition on dual relationships. In 1993, the Board adopted an absolute, interminable prohibition on dual relationships. This was done to ensure that there was no ambiguity about the seriousness of dual relationship violations which represent the majority of the disciplinary cases to come before the Board. However, the stringency of the rule exceeds the Code of Ethics of the American Counseling Association and may be unreasonable in some situations, such as occupational aptitude testing or career counseling, which do not create the same potential for client exploitation as treatment for emotional problems. The Board has established new language to set forth a more reasonable prohibition which will still provide adequate protection to the public.

The Board also reviewed the regulation prohibiting provision of services by lectures or through electronic or other media. The Board determined that activities such as advice programs and columns are commonplace, and that no evidence of harm to the public from these activities has ever been presented to the Board. The Board has repealed this standard.

Another issue the Board addressed is that the regulations require professional counselors to report violations of laws and regulations committed by other counselors, but not other licensed mental health service providers who may see the same clients. The Board has expanded this rule to include violations by other licensed or certified mental health providers to provide guidance to counselors who are uncertain of their responsibility to report harm to a client by a provider in another license category.

The Board has also identified language that is unnecessary and areas that could be streamlined by combining language in related sections where appropriate.

**Advantages:** The changes make the standards more concise, more reasonable and easier to enforce.

**Disadvantages:** There are no disadvantages to the changes.

### 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 Board held a public hearing on the proposed changes on November 18, 1999. No verbal comment was offered at the hearing. During the 60 day comment period, comment was received from a resident requesting that the Board allow a 2-year effective date delay for the new residency requirements to accommodate individuals who are in the process of working toward licensure. The Board responded that anyone who registers a residency prior to the effective date of the amendments will be governed by the requirements in effect at the time they registered. Individuals who register a residency after the effective date of the new regulations will be required to meet the new requirements.

### 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 115-20-10. Definitions.** To reduce duplication and eliminate the possibility for discrepancies with statute, the Board has replaced definitions of terms which are set forth in statute with a reference to the *Code* section where they appear. For clarification, the Board has added definitions for “*exempt setting*,” “*non-exempt setting*” and “*jurisdiction*,” which are used in the regulations but not currently defined, and added definitions for acronyms referenced in the new degree program requirements. The Board has also added definitions for the terms “*residency*” and “*resident*”, which replace the terms “*supervised experience*” and “*supervisee*” used in the current regulations. For conformance with changes to the education and experience requirements, the Board has removed the definition of “*practicum*” and the reference to this word in the definition of “*internship*.”

**18 VAC 115-20-30. Substance Abuse Counseling.** The Board has repealed this section because there is no reason to have the Regulations Governing the Certification of Substance Abuse Counselors incorporated by reference into this chapter.

**18 VAC 115-20-35. Sex Offender Treatment Provider Certification.** The Board has added this new section, , to direct its licensees who are seeking certification as sex offender treatment providers to the Board of Psychology.

**18 VAC 115-20-40. Prerequisites for licensure by examination.** The Board has amended this section to remove unnecessary language and clarify the documentation required in the application package. The Board has also eliminated the reference letter requirement.

**18 VAC 115-20-45. Prerequisites for licensure by endorsement.** This new section is sets forth new requirements for licensure by endorsement for experienced counselors licensed in other jurisdictions.

**18 VAC 115-20-49. Degree program requirements.** To reduce the levels of subdivision in the regulations, the Board has separated the degree program, course work and experience requirements into three different sections and reorganized the sections in to a format that is easier to follow. The new section setting forth degree program requirements includes a provision for the automatic acceptance of programs that are accredited by one of the two national accrediting bodies for counseling programs.

**18 VAC 115-20-50 and 18 VAC 115-20-51. Coursework requirements.** The Board has updated the education requirements based on current practice, public comment, and national accreditation standards. The Board is requiring completion of four new content areas within the existing 60 graduate hour requirement, and specifies internship clock hours and client contact hours. The new requirements will have a delayed effective date to allow programs time to make curriculum changes and to accommodate students who will be close to completing their 60 hours at the time the new regulations take effect. A provision is also included to provide for acceptance of course work completed previously that may have met the regulations in effect at the time.

**18 VAC 115-20-52. Residency.** The registration requirement set forth in this section is not a new requirement, but has been relocated for emphasis. Throughout this section, the word “experience” has been replaced with “residency.” To reduce the burden of the residency requirement, the Board has made the following changes:

- Rescind the requirement that ½ of the supervision occur on-site.
- Accept group supervision hours as equivalent to face-to-face supervision hours (for up to ½ of the total hours).
- Add two new licensure titles to the list of acceptable supervisors.
- Allow 600-900 hours of pre-degree internship to count toward the residency.

- Change the face-to-face supervision requirement from 1 hour per week to 1 hour per 20 hours of work experience to help individuals working part-time toward their residency requirement.

The Board has established a requirement for two years of post-licensure clinical experience for individuals providing supervision to residents. The Board is also rescinding the requirement for an annual evaluation reported to the Board, and replacing it with a 3-month evaluation presented to the resident. Because residents work under many supervisors, clarification is added that they must have at least one report of satisfactory competency in each area of the residency.

In response to frequent requests for the number of client contact hours expected during the residency, the Board is specifying that 2000 client contact hours be accrued during the 4,000 hour residency. In response to frequent inquiries from residents and supervisors regarding billing and use of professional titles by residents, the Board is clarifying of the language in subdivision B 9 of 18 VAC 115-20-52.

**18 VAC 115-20-50. Character and professional integrity.** The Board is repealing this section, which does not comply with the Americans With Disabilities Act.

**18 VAC 115-20-70. General examination requirements; schedules; time limits and 18 VAC 115-20-80. Written examination.** The Board has streamlining the sections setting forth the examination requirements by removing unnecessary language from 18 VAC 115-20-70 and 18 VAC 115-20-80 and combining the retained language into one section. These formatting changes do not represent changes in the actual examination requirements. An equivalency provision for endorsement applicants has been added to this section.

**18 VAC 115-20-130. Standards of Practice.** The Board had amended the standards of practice to clarify the regulations and improve their enforceability. Language that duplicates statute was struck and related subdivisions were combined where appropriate. The Board is recommending a new language for the prohibition on dual relationships that is more consistent with the regulations of other boards, and the codes of ethics of professional associations.

**18 VAC 115-20-140. Grounds for revocation, suspension probation, reprimand, censure, or denial or renewal of licensure.** Minor changes are proposed to make this section clearer and more concise..

*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 or on the economic self-sufficiency, self pride and assumption of responsibility. The addition of a marriage and family therapy course and a substance abuse course to the education requirements may help counselors strengthen the marital commitment for their clients. Overall, the changes should increase the disposable income for individuals coming in by endorsement from other states, and for residents in counseling who may now obtain their residency hours more easily. The simplified reinstatement procedure will facilitate the return of individuals to Virginia practice after an illness or absence.