

January 24, 2020
Board Room 3
10:00 a.m.

Call to Order – Holly Tracy, LPC, LMFT, Committee Chair

- Welcome and Introductions
- Emergency Egress Procedures
- Mission of the Board

Approval of Minutes

- Regulatory Committee Meeting - October 31, 2019* Page 3

Public Comment

The Committee will not receive comment on any pending regulation process for which a public comment period has closed or any pending or closed complaint or disciplinary matter.

Unfinished Business

- Consideration of guidance document for emotional support animals Page 8

New Business

- Status of Regulations. Page 10
- Petition for Rulemaking to amend regulations to accept 1500 direct/indirect service hours, 50 hours of supervision, and one year experience from a master's level internship.* Page 12
- Consideration of public comment on the Notice of Intended Regulations Action (NOIRA) related to the issuance of a temporary license for a resident in counseling, marriage and family therapy and substance abuse treatment.* Page 25
- Notice of Intended Regulatory Action (NOIRA) and proposed regulations related to periodic review for Regulations Governing the Certification of Rehabilitation Providers.* Page 38
- Report on 2020 General Assembly
- Discuss the need for a 2020 Supervisor Summit Training.

Next Meeting – May 1, 2020

Meeting Adjournment

*Requires a Committee Vote

This information is in **DRAFT** form and is subject to change. The official agenda and packet will be approved by the Board at the Regulatory Committee meeting. One printed copy of the agenda packet will be available for the public to view at the Board Meeting pursuant to Virginia Code Section 2.2-3707(F).

**Regulatory Committee
Meeting Minutes
October 31, 2019**

**VIRGINIA BOARD OF COUNSELING
REGULATORY COMMITTEE MEETING
DRAFT MINUTES
Thursday, October 31, 2019**

TIME AND PLACE: The meeting was called to order at 10:00 a.m. on Thursday, October 31, 2019, in Board Room 4 at the Department of Health Professions (DHP), 9960 Mayland Drive, Henrico, Virginia.

PRESIDING: Johnston Brendel, Ed.D., LPC, LMFT, Chairperson

COMMITTEE MEMBERS PRESENT: Kevin Doyle Ed.D., LPC, LSATP
Terry Tinsley, PhD, LPC, LMFT, CSOTP

COMMITTEE MEMBER ABSENT: Holly Tracy, LPC, LMFT

STAFF PRESENT: Sandie Cotman, Licensing Specialist
Jaime Hoyle, JD, Executive Director
Jennifer Lang, Deputy Executive Director
Charlotte Lenart, Deputy Executive Director, Licensing
Brenda Maida, Licensing Specialist

OTHERS PRESENT: Elaine Yeatts, DHP Senior Policy Analyst

APPROVAL OF MINUTES: Dr. Doyle moved to approve the minutes of the August 15, 2019 meeting with minor changes to the wording. The motion was seconded by Dr. Brendel and passed with one member (Dr. Tinsley) abstaining.

PUBLIC COMMENT: Written public comment was received from Joseph Lynch, Vice President of the Virginia Society for Clinical Social Work.

DISCUSSIONS:

- I. **Unfinished Business:**
- Discussion on supervisor designation and qualifications:**
- Board staff provided research on the minimum requirements of a supervisor from other jurisdictions. Committee recommended no changes at this time.
- Discussion on creating didactic training in substance abuse definitions for each required area:**
- Staff requested Dr. Brendel ask Board members, with substance abuse credentials (Dr. Doyle, Ms. Engelken and Ms. Stransky), to be on a committee to develop definitions on core areas of substance abuse counseling didactic training consistent with the requirements in the final stages of regulations.

Criminal Background Checks:

- After discussion, Dr. Doyle moved, which was seconded by Dr. Tinsley, to recommend to the full Board to request the Agency address the Board's due diligence and duty to protect the public and require all applicants under the Board to complete a criminal background check prior to being considered for certification, licensure or registration. The motion passed unanimously.

II. New Business:

- **Discuss Regulatory Committee membership, leadership and scheduling.**
Discussed scheduling changes to the Regulatory Committee meetings to at least two weeks prior to the full Board meeting to allow all Board members and staff the opportunity to review the Committees recommendations. Dr. Brendel thanked Dr. Tinsley for agreeing to be a part of the Committee.
- **Chart of Regulatory Actions**
Ms. Yeatts provided a chart of current regulatory actions as of October 9, 2019 that listed:
 - Regulations Governing Delegation to an Agency Subordinate [18 VAC 115 - 15]
Action: Periodic review; Stage: Fast-Track - Register Date: 10/28/19 Effective: 12/12/19
 - Regulations Governing the Practice of Professional Counseling [18 VAC 115 - 20]
Action: Credential review for foreign graduates; Stage: Proposed - Register Date: 7/22/19 - Board to adopt final regulations
 - Regulations Governing the Practice of Professional Counseling [18 VAC 115 - 20]
Action: Acceptance of doctoral practicum/internship hours towards residency requirements; Stage: Final - Register Date: 9/16/19 – Effective: 10/16/19
 - Regulations Governing the Practice of Professional Counseling [18 VAC 115 - 20]
Action: Requirement for CACREP accreditation for educational programs; Stage: Proposed - At Governor's Office
 - Regulations Governing the Practice of Professional Counseling [18 VAC 115 - 20]
Action: Periodic review; Stage: NOIRA - Register Date: 8/19/19 - Board to adopt proposed regulations
 - Regulations Governing the Practice of Professional Counseling [18 VAC 115 - 20]
Action: Resident license; Stage: Emergency/NOIRA - At Secretary's Office
 - Regulations Governing the Practice of Professional Counseling [18 VAC 115 - 20]
Action: Unprofessional conduct - conversion therapy; Stage: Proposed - At DPB
 - Regulations Governing the Certification of Substance Abuse Counselors [18 VAC 115 - 30]
Action: Updating and clarifying regulations; Stage: Final - At Governor's Office

- Regulations Governing the Certification of Rehabilitation Providers [18 VAC 115 - 40]
Action: Periodic review; Stage: NOIRA - Register Date: 11/11/19
- Regulations Governing the Registration of Peer Recovery Specialists [under development] [18 VAC 115 - 70] Action: Initial regulations for registration; Stage: Final - Register Date: 10/14/19 – Effective 11/13/19
- Regulations Governing the Registration of Qualified Mental Health Professionals [under development] [18 VAC 115 - 80] Action: Initial regulations for registration of Qualified Mental Health Professionals; Stage: Final - Register Date: 10/14/19 – Effective 11/13/19
- **Review, discuss and make recommendation for the proposed regulations related to qualified mental health professional – trainees.**
The Committee discussed public comment from Mr. Lynch. The Committee requested that Dr. Doyle and Ms. Hoyle respond in writing to Mr. Lynch regarding his concerns.

Dr. Doyle, moved, which was seconded by Dr. Tinsley, to recommend a Fast-Track action on the proposed language regarding QMHP-Trainees to the full Board. The motion passed unanimously.

Dr. Doyle, moved, which was seconded by Dr. Tinsley, to recommend an Exempt action on the reduction of fees for QMHP-Trainees to the full Board. The motion passed unanimously.
- **Consideration of public comment on the Notice of Intended Regulatory Action (NOIRA) and proposed regulations related to periodic review for Regulations Governing the Practice of Professional Counseling, Marriage and Family Therapy and Substance Abuse Practitioners.**
The Committee discussed the public comment related to the periodic review. The Board discussed the term face-to-face but decided to make no changes.

Dr. Tinsley, moved, which was seconded by Dr. Doyle, to recommend the proposed changes to the periodic review for the practice of professional counseling, marriage and family therapy and substance abuse practitioners to the full Board. The motion passed unanimously.
- **Petition for Rulemaking amend regulations to amend 18VAC115-20-52 to eliminate the restriction on residents’ ability to directly bill for their services.**
The Committee deferred any recommendations to the full Board so that all public comment can be reviewed and discussed. Public comment period ends on October 25, 2019.
- **Petition for Rulemaking to amend regulations to amendment section 18VAC115-50-55 to reduce the required internship number of hours of experience with couples and families from 200 of the 240 to 120 of the required 240 hours.**
The Committee deferred any recommendations to the full Board so that all public comment can be reviewed and discussed. Public comment period ends on November 13, 2019.
- **Review Guidance Document 115-1.8: Examinations approved by the Board for Certification as a Rehabilitation Counselor, adopted September 11, 2015.**
Dr. Doyle moved, which was seconded by Dr. Tinsley, to recommend Guidance Document 115-1.8 be reaffirmed to the full Board. The motion passed unanimously.

- **Review Guidance Document 115-7: Supervised Experience Requirements for the Delivery for Clinical Services for Professional Counselor Licensure, revised November 13, 2015.**

The Committee agreed to delay the review of Guidance Document 115-7 until after the emergency regulations related to the issuance of temporary resident license are in effect.

- **Review Guidance Document 115-2.2: Guidance on participation by substance abuse counselors in interventions, revised November 13, 2015.**

Dr. Tinsley moved, which was seconded by Dr. Doyle, to recommend Guidance Document 115-2.2 be incorporated in to Guidance Document 115.11 to the full Board. The motion passed unanimously.

- **Discuss and Review Guidance Document 115-2: Impact of Criminal Convictions, Impairment and Past History on Licensure or Certification, revised February 9, 2018.**

The Committee discussed with no actions.

- **Emotional support animal discussion.**

After discussion, Dr. Doyle agreed to develop a preliminary draft for a guidance document related to emotional support animals to be reviewed and considered at the next meeting.

- **Consideration of continuing education hours for counselors deployed as a Disaster Mental Health provider with the Red Cross.**

Dr. Doyle moved, which was seconded by Dr. Tinsley, to recommend to the full Board to adopt guidance on acceptance of disaster mental health worker for continuing competency requirements. The motion passed unanimously.

NEXT SCHEDULED MEETING: The next Committee meeting is scheduled for January 24, 2020 at 10:00 a.m.

ADJOURNMENT: The meeting adjourned at 1:53 p.m.

Johnston Brendel, Ed.D., LPC, LMFT
Chairperson

Date

Jaime Hoyle, JD
Executive Director

Date

Consideration of Guidance Document on Emotional Support Animals

DRAFT GUIDANCE DOCUMENT: EMOTIONAL SUPPORT ANIMALS

Licenseses who are asked by clients to write letters or otherwise advocate for clients' use of emotional support animals, therapy animals, or other animal-assisted accommodations are advised to consider whether the licensee has relevant training and/or experience to support such advocacy.

Licenseses are also advised to consider the plan for treatment, appropriate documentation, and the justification for their advocacy, based on clinical reasons.

Sections of the standards of practice for licensed professional counselors that may be applicable include guidance to:

B. 1. Practice in a manner that is in the best interest of the public and does not endanger the public health, safety, or welfare;

B. 2. Practice only within the boundaries of their competence, based on their education, training, supervised experience and appropriate professional experience and represent their education training and experience accurately to clients;

B. 3. Stay abreast of new counseling information, concepts, applications and practices which are necessary to providing appropriate, effective professional services;

B. 4. Be able to justify all services rendered to clients as necessary and appropriate for diagnostic or therapeutic purposes;

B. 5. Maintain client records for a minimum of five years or as otherwise required by law from the date of termination of the counseling relationship.

Chart of Regulatory Actions

Agenda Item: Regulatory Actions – Chart of Regulatory Actions

Staff Note: Attached is a chart with the status of regulations for the Board as of January 14, 2020.

Board of Counseling					
Chapter	Action / Stage Information				
Regulations Governing the Practice of Professional Counseling [18 VAC 115 - 20]	<table border="1"> <tr> <td><u>Action:</u></td> <td>Periodic review</td> </tr> <tr> <td><u>Stage:</u></td> <td>NOIRA - Register Date: 8/19/19</td> </tr> </table>	<u>Action:</u>	Periodic review	<u>Stage:</u>	NOIRA - Register Date: 8/19/19
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Regulations Governing the Certification of Rehabilitation Providers [18 VAC 115 - 40]	<table border="1"> <tr> <td><u>Action:</u></td> <td>Periodic review</td> </tr> <tr> <td><u>Stage:</u></td> <td>NOIRA - Register Date: 11/11/19</td> </tr> </table>	<u>Action:</u>	Periodic review	<u>Stage:</u>	NOIRA - Register Date: 11/11/19
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Regulations Governing the Registration of Qualified Mental Health Professionals [under development] [18 VAC 115 - 80]	<table border="1"> <tr> <td><u>Action:</u></td> <td> Reduction in application fee for trainees</td> </tr> <tr> <td><u>Stage:</u></td> <td>Final - Register Date: 1/20/20</td> </tr> </table>	<u>Action:</u>	 Reduction in application fee for trainees	<u>Stage:</u>	Final - Register Date: 1/20/20
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<u>Stage:</u>	Final - Register Date: 1/20/20				

Petition for Rule-Making (Usher)

To amend regulations accept
1500 direct/indirect service
hours, 50 hours of supervision,
and one year of experience
from a master's level internship

Agenda Item: Response to Petition for Rulemaking

Included in your agenda package are:

A copy of the petition received from Robin Usher

A copy of the comments on the petition

A copy of the emergency regulations for 18VAC115-50-52

Board action:

To initiate rulemaking by adoption of a Notice of Intended Regulatory Action: or

To initiate rulemaking by adoption of proposed regulations by a fast-track action;
or

To reject the petitioner's request

Request for Comment on Petition for Rulemaking

Promulgating Board: **Board of Counseling**

Regulatory Coordinator: Elaine J. Yeatts
(804)367-4688
elaine.yeatts@dhp.virginia.gov

Agency Contact: Jaime Hoyle
Executive Director
(804)367-4406
jaime.hoyle@dhp.virginia.gov

Contact Address: Department of Health Professions
9960 Mayland Drive
Suite 300
Richmond, VA 23233

Chapter Affected:

18 vac 115 - **Regulations Governing the Practice of Professional
20: Counseling**

Statutory Authority: State: Chapter 35 of Title 54.1

Date Petition Received 10/29/2019

Petitioner Robin Usher

Petitioner's Request

To accept 1500 direct/indirect service hours, 50 hours of supervision, and one year from a master's level internship so long as the internship hours were acquired after 30 course hours from a CACREP accredited counseling program and in not more than 3 years of study.

Agency Plan

In accordance with Virginia law, the petition will be filed with the Register of Regulations and published on November 25, 2019 with comment requested until December 25, 2019. It will also be placed on the Virginia Regulatory Townhall and available for comments to be posted electronically. At its first meeting following the close of comment, which is scheduled for February 7, 2020, the Board will consider the request to amend regulations and all comment received in support or opposition.

Publication Date 11/25/2019 *(comment period will also begin on this date)*

Comment End Date 12/25/2019



COMMONWEALTH OF VIRGINIA

Board of Counseling

9960 Mayland Drive, Suite 300
Richmond, Virginia 23233-1463

(804) 367-4610 (Tel)
(804) 527-4435 (Fax)

Petition for Rule-making

The Code of Virginia (§ 2.2-4007) and the Public Participation Guidelines of this board require a person who wishes to petition the board to develop a new regulation or amend an existing regulation to provide certain information. Within 14 days of receiving a valid petition, the board will notify the petitioner and send a notice to the Register of Regulations identifying the petitioner, the nature of the request and the plan for responding to the petition. Following publication of the petition in the Register, a 21-day comment period will begin to allow written comment on the petition. Within 90 days after the comment period, the board will issue a written decision on the petition. If the board has not met within that 90-day period, the decision will be issued no later than 14 days after it next meets.

Please provide the information requested below. (Print or Type)		
Petitioner's full name (Last, First, Middle initial, Suffix) Usher, Robin, D.		
Street Address 3600 West Broad Street Unit 403	Area Code and Telephone Number 470-213-8299	
City Richmond	State Virginia	Zip Code 23230
Email Address (optional)	Fax (optional)	

Respond to the following questions:

1. What regulation are you petitioning the board to amend? Please state the title of the regulation and the section/sections you want the board to consider amending.

Residency Requirements 18VAC115-20-49

2. Please summarize the substance of the change you are requesting and state the rationale or purpose for the new or amended rule.

Petition for the Board to accept 1500 direct/indirect service hours, 50 hours of supervision, and one year from a Master's level internship so long as the internship hours were acquired after 30 course hours from a CACREP accredited counseling program and in not more than 3 years of study. For the 1000 hours to be considered, they must be in excess of the practicum and internship hours required for licensure and they should be acquired under a supervisor who meets the Board's standard of competency for supervisors who are trained in clinical supervision. The proposed change would expediate licensure for candidates who are applying for licensure from comprehensive and well developed counseling programs while adding to the counseling workforce. These changes are necessary to address the growing burden of mental illness for Virginians while also addressing limited career opportunities for counseling Residents.

3. State the legal authority of the board to take the action requested. In general, the legal authority for the adoption of regulations by the board is found in § 54.1-2400 of the Code of Virginia. If there is other legal authority for promulgation of a regulation, please provide that Code reference.

No other legal authority is assumed.

Signature: Date: 10/29/2019



Agency

Department of Health Professions

Board

Board of Counseling

Chapter

Regulations Governing the Practice of Professional Counseling [18 VAC 115 - 20]

8 comments

[All comments for this forum](#)[Back to List of Comments](#)**Commenter:** Anne Beverly Chow, Bluebird Counseling Center

11/25/19 11:11 am

I support this petition

Master's level clinicians should be afforded this leniency in becoming licensed clinicians. It would be more cost effective and help to accommodate Virginia's ever-growing need for mental health services.

Commenter: Robin Usher

11/25/19 4:30 pm

I Strongly Support This Petition

Residents may have had experience in counseling professions before the start of their Masters, and many graduate from well-established programs that provide a level of training that is on-par with the supervised experience of some Residents. While the Board of Counseling already accepts 500 hours of supervised experience from the Masters internship, this has done little to reduce the time that it would take for a Mental Health professional to become licensed post-Masters.

Some states have adopted polices to accept a greater number of pre-Masters hours towards the post-Masters experience, so long as the hours occur after 35 course hours, and in excess of the required practicum an internship hours. This petition requests that Virginia's policies be more in line with states that have chosen to focus on the quality of education for counselors rather than the quantity of hours acquired post-Masters.

Not making a shift towards better credentialing practices will sustain the mental health and substance abuse crisis facing Virginians today. The current licensure process ensures burnout, deters individuals from entering the counseling workforce, and setups a condition where mental health professionals are unable to find meaningful work after the completion of their Masters. The current system may also encourage the abuse of Resident clinicians as they are forced to work in settings where their work isn't fairly compensated.

Again, I strongly support changing the required hours for licensure. I feel that the change is necessary, and I believe that it could benefit all Virginias by expanding the counseling workforce

and by highlighting counseling programs that supervise their students for a much broader training experience under the foundations established by CACREP.

Commenter: Carley Graves, Virginia Tech

11/30/19 10:30 am

I support this petition

At a time where the demand for mental health counselors is extremely high this is a good step towards removing barriers for those to get into the field while still ensuring that individuals are qualified to offer mental health services. Considering the cost of education it is only right to allow some leniency for individuals putting in so many hours of work without compensation. With the increasing awareness of mental health, high divorce rates, and large amount of drug use, the wait time to get mental help is ridiculous in most areas. If there is anything that can be done to encourage qualified individuals to enter the mental health field, it should be done.

Commenter: Cynthia Miller, Ph.D., LPC

12/13/19 8:09 pm

Oppose this petition

The petitioner is asking for a significant reduction in the required hours of experience and supervision in order to be licensed in Virginia. I oppose this petition. A review of the 2014 report on Licensure Requirements for Professional Counselors published by ACA shows that the majority of states at that time required 3,000 or more hours of post-master's experience and at least 100 hours of supervision. Only two states, Florida and South Carolina, required just 1000-1500 hours of post-master's experience. I do not have the 2016 ACA report in front of me but I have no reason to suspect that the majority of states have lowered their experience requirements over the last 5 years. Moreover, under the current regulations, the petitioner's request to reduce the required supervision hours from 200 to just 50 would mean that a resident would need only six months of weekly individual supervision in order to be licensed (since the current regs allow for 50% of supervision hours to come from group supervision). That is simply not enough time for any supervisor to be feel reasonably assured that a new counselor is consistently reliable in their ability to competently perform all the functions of a professional counselor. While I agree that the licensing process is long and rigorous, I do not think that reducing the required experiential and supervision hours necessary for independent practice allows the Board to adequately meet its charge to protect the public.

Commenter: David Tsveer, New Directions Counseling Group, LLC

12/14/19 4:42 pm

I strongly agree with this petition

12/16/19 11:33 am

Commenter: Gerard Lawson, Virginia Tech

Oppose This Petition

I oppose this petition primarily because it is completely unclear what the intent is. The petition begins with: "To accept 1500 direct/indirect service hours". Does that mean 1,500 Direct and 1,500 hundred Indirect, or 1,500 Direct and Indirect combined? In either case, it would be proposing a significant reduction in the number of direct hours required. One would be a catastrophic reduction from 3,600 hour to 1,500. Let's assume the petitioner was not proposing halving the required hours. In that case, the reduction is still from 2,000 Direct hours to 1,500 and the total number of hours is reduced by 400 (from 3,400 to 3,000). Interestingly, in the actual petition, the text goes on to read, "For the 1000 hours to be considered, they must be in excess of the practicum and internship hours required for licensure..." This is the first mention of 1,000 hours, and I have no idea what that means, or where that reduction would come from.

The most concerning part is that the petition suggests, "reducing the supervision concurrent with that experience from 200 hours to 50." That is a patently bad idea. Having trained over 1,000 LPC supervisors in the past decade one of the common concerns expressed is that they have so little time to influence a positive change in supervisee knowledge, skills, and abilities in the 200 hours and two-years.

The purported rationale for this petition is to "expedite licensure" for residents from "comprehensive and well developed programs" and to "address the growing burden of mental illness for Virginians while also addressing limited career opportunities for Residents". With all due respect, the job of the Board is to protect the public and ensure client welfare. The proposed changes have the potential to reduce the quality of mental health services in Virginia, and licensing highly competent counselors should be focus of the Board not expediting licensure. Please do not accept this petition.

Commenter: Suzan K. Thompson, Ph.D., LPC, Integrative Counseling & Wellness

12/16/19 9:32 pm

I Oppose this Petition

I strongly oppose this petition. Significantly reducing the number of hours a Resident must EARN would potentially impact the skills, supervision and experience they accrue during the Residency. I don't believe this is in the best interest of the public and would cause potential harm.

Commenter: A. Adele Walker-Blue, LPC

12/19/19 11:36 am

Oppose

I am proud to be an LPC in the Commonwealth of Virginia, which has been a leading state in establishing licensing for mental health professionals, with rigorous standards. Upholding strict licensing standards such as practical experience and supervision hours consistent with those recommended by the American Counseling Association are essential for protecting the public when it comes to mental health treatment in Virginia. Additionally, this petition lacks clarity. While

the increasing need for mental health treatment may necessitate some adjustments in current system, it must be done in a thoughtful manner that does leave the public vulnerable to harm.

18VAC115-20-52. ~~Residency~~ Resident license and requirements for a residency.

A. ~~Registration~~ Resident license. Applicants ~~who render~~ for temporary licensure as a resident ~~in counseling services~~ shall:

1. ~~With their supervisor, register their supervisory contract on the appropriate forms for board approval before starting to practice under supervision.~~ Apply for licensure on a form provided by the board to include the following: (i) verification of a supervisory contract; (ii) the name and licensure number of the clinical supervisor and location for the supervised practice; and (iii) an attestation that the applicant will be providing clinical counseling services;

2. Have submitted an official transcript documenting a graduate degree ~~as~~ that meets the requirements specified in 18VAC115-20-49 to include completion of the coursework and internship requirement specified in 18VAC115-20-51; ~~and~~

3. Pay the registration fee;

4. Submit a current report from the U.S. Department of Health and Human Services National Practitioner Data Bank (NPDB); and

5. Have no unresolved disciplinary action against a mental health or health professional license, certificate, or registration in Virginia or in another jurisdiction. The board will consider the history of disciplinary action on a case-by-case basis.

B. Residency requirements.

1. The applicant for licensure as a professional counselor shall have completed a 3,400-hour supervised residency in the role of a professional counselor working with various populations, clinical problems, and theoretical approaches in the following areas:

a. Assessment and diagnosis using psychotherapy techniques;

- b. Appraisal, evaluation, and diagnostic procedures;
 - c. Treatment planning and implementation;
 - d. Case management and recordkeeping;
 - e. Professional counselor identity and function; and
 - f. Professional ethics and standards of practice.
2. The residency shall include a minimum of 200 hours of in-person supervision between supervisor and resident in the consultation and review of clinical counseling services provided by the resident. Supervision shall occur at a minimum of one hour and a maximum of four hours per 40 hours of work experience during the period of the residency. For the purpose of meeting the 200-hour supervision requirement, in-person may include the use of secured technology that maintains client confidentiality and provides real-time, visual contact between the supervisor and the resident. Up to 20 hours of the supervision received during the supervised internship may be counted ~~towards~~ toward the 200 hours of in-person supervision if the supervision was provided by a licensed professional counselor.
3. No more than half of the 200 hours may be satisfied with group supervision. One hour of group supervision will be deemed equivalent to one hour of individual supervision.
4. Supervision that is not concurrent with a residency will not be accepted, nor will residency hours be accrued in the absence of approved supervision.
5. The residency shall include at least 2,000 hours of face-to-face client contact in providing clinical counseling services. The remaining hours may be spent in the performance of ancillary counseling services.

6. A graduate-level internship in excess of 600 hours, which was completed in a program that meets the requirements set forth in 18VAC115-20-49, may count for up to an additional 300 hours ~~towards~~ toward the requirements of a residency.
7. Supervised practicum and internship hours in a CACREP-accredited doctoral counseling program may be accepted for up to 900 hours of the residency requirement and up to 100 of the required hours of supervision provided the supervisor holds a current, unrestricted license as a professional counselor.
8. The residency shall be completed in not less than 21 months or more than four years. Residents who began a residency before August 24, 2016, shall complete the residency by August 24, 2020. An individual who does not complete the residency after four years shall submit evidence to the board showing why the supervised experience should be allowed to continue. A resident shall meet the renewal requirements of subsection C of 18VAC115-20-100 in order to maintain a license in current, active status.
9. The board may consider special requests in the event that the regulations create an undue burden in regard to geography or disability that limits the resident's access to qualified supervision.
10. Residents may not call themselves professional counselors, directly bill for services rendered, or in any way represent themselves as independent, autonomous practitioners or professional counselors. During the residency, residents shall use their names and the initials of their degree, their resident license number, and the title "Resident in Counseling" in all written communications. Clients shall be informed in writing ~~of the resident's status~~ that the resident does not have authority for independent practice and is under supervision and shall provide the supervisor's name, professional address, and phone number.

11. Residents shall not engage in practice under supervision in any areas for which they have not had appropriate education.

12. Residency hours approved by the licensing board in another United States jurisdiction that meet the requirements of this section shall be accepted.

C. Supervisory qualifications. A person who provides supervision for a resident in professional counseling shall:

1. Document two years of post-licensure clinical experience;

2. Have received professional training in supervision, consisting of three credit hours or 4.0 quarter hours in graduate-level coursework in supervision or at least 20 hours of continuing education in supervision offered by a provider approved under 18VAC115-20-106; and

3. Hold an active, unrestricted license as a professional counselor or a marriage and family therapist in the jurisdiction where the supervision is being provided. At least 100 hours of the supervision shall be rendered by a licensed professional counselor. Supervisors who are substance abuse treatment practitioners, school psychologists, clinical psychologists, clinical social workers, or psychiatrists and have been approved to provide supervision may continue to do so until August 24, 2017.

D. Supervisory responsibilities.

1. Supervision by any individual whose relationship to the resident compromises the objectivity of the supervisor is prohibited.

2. The supervisor of a resident shall assume full responsibility for the clinical activities of that resident specified within the supervisory contract for the duration of the residency.

3. The supervisor shall complete evaluation forms to be given to the resident at the end of each three-month period.

4. The supervisor shall report the total hours of residency and shall evaluate the applicant's competency in the six areas stated in subdivision B 1 of this section.

5. The supervisor shall provide supervision as defined in 18VAC115-20-10.

E. Applicants shall document successful completion of their residency on the Verification of Supervision Form at the time of application. Applicants must receive a satisfactory competency evaluation on each item on the evaluation sheet. Supervised experience obtained prior to April 12, 2000, may be accepted toward licensure if this supervised experience met the board's requirements that were in effect at the time the supervision was rendered.

**Public comment on the Notice of
Intended Regulatory Action
(NOIRA) related to the issuance
of temporary residency licenses**

Agenda Item: Public comment on NOIRA related to the issuance of a temporary license for a resident in counseling, marriage and family therapy and substance abuse treatment

Included in your agenda package are:

A copy of the NOIRA on Townhall

A copy of the comments as of 1/14/2019. *(Public comment received after this date will be distributed at the Regulatory Committee meeting)*

A copy of the emergency regulations

Board action:

Adoption of proposed regulations related to resident licenses



townhall.virginia.gov

Emergency Regulation and Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Board of Counseling, Department of Health Professions
Virginia Administrative Code (VAC) citation(s)	18VAC115-20 18VAC115-50 18VAC115-60
Regulation title(s)	Regulations Governing the Practice of Professional Counseling Regulations Governing the Practice of Marriage and Family Therapy Regulations Governing the Licensure of Substance Abuse Practitioners
Action title	Issuance of a resident license
Date this document prepared	8/22/19

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

Brief Summary

Please provide a brief summary (preferably no more than 2 or 3 paragraphs) of the subject matter, intent, and goals of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

Regulations implement the statutory mandate for issuance of a temporary license for a residency in counseling. The amendments set fees for initial and renewal of a resident license, qualifications for the issuance of a license and for its renewal, limitations on the number of times a resident may renew the temporary license, and a time limit for passage of the licensing examination. Amendments in Chapter 20 for professional counselors are duplicated in Chapter

50 for marriage and family therapists and in Chapter 60 of licensed substance abuse treatment practitioners.

Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.

N/A

Mandate and Impetus (Necessity for Emergency)

Please explain why this rulemaking is an emergency situation in accordance with Virginia Code § 2.2-4011 A and B. In doing so, please either:

- a) Indicate whether the Governor's Office has already approved the use of emergency regulatory authority for this regulatory change.*
- b) Provide specific citations to Virginia statutory law, the appropriation act, federal law, or federal regulation that require that a regulation be effective in 280 days or less from its enactment.*

As required by § 2.2-4011, please also describe the nature of the emergency and of the necessity for this regulatory change. In addition, delineate any potential issues that may need to be addressed as part of this regulatory change.

This action implements the statutory mandate (Chapter 428 of the 2019 General Assembly) to promulgate regulations for the issuance of temporary licenses to residents in counseling. The second enactment on HB2282 requires the Board to promulgate regulations within 280 days of enactment, so the Board adopted emergency regulations to comply with the mandate.

Legal Basis

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

Regulations are promulgated under the general authority of Chapter 24 of Title 54.1 of the Code of Virginia. Section 54.1-2400, which provides the Board of Counseling the authority to promulgate regulations to administer the regulatory system:

§ 54.1-2400 -General powers and duties of health regulatory boards

The general powers and duties of health regulatory boards shall be:

- 1. To establish the qualifications for registration, certification or licensure in accordance with the applicable law which are necessary to ensure competence and integrity to engage in the regulated professions.*

2. *To examine or cause to be examined applicants for certification or licensure. Unless otherwise required by law, examinations shall be administered in writing or shall be a demonstration of manual skills.*
3. *To register, certify or license qualified applicants as practitioners of the particular profession or professions regulated by such board.*
4. *To establish schedules for renewals of registration, certification, licensure, permit, and the issuance of a multistate licensure privilege.*
5. *To levy and collect fees for application processing, examination, registration, certification, permitting, or licensure or the issuance of a multistate licensure privilege 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. ...*

Specific authority for issuance of a temporary resident license counseling is found in Chapter 35 of Title 54.1:

§ 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. *[Expired.]*
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 and certification of certified substance abuse counselors and certified substance abuse counseling assistants. The requirements for membership in NAADAC: the Association for Addiction Professionals and its national examination may be considered by the Board in the promulgation of these regulations. The Board also may provide for the consideration and use of the accreditation and examination services offered by the Substance Abuse Certification Alliance of Virginia. The educational credit hour, clinical experience hour, and clinical supervision hour requirements for licensed substance abuse treatment practitioners shall not be less than the educational credit hour, clinical experience hour, and clinical supervision hour requirements for licensed professional counselors. Such regulations also shall establish standards and protocols for the clinical supervision of certified substance abuse counselors and the supervision or direction of certified substance abuse counseling assistants, and reasonable access to the persons providing that supervision or direction in settings other than a licensed facility.

8. To maintain a registry of persons who meet the requirements for supervision of residents. The Board shall make the registry of approved supervisors available to persons seeking residence status.

9. To promulgate regulations for the registration of qualified mental health professionals, including qualifications, education, and experience necessary for such registration, and for the registration of persons receiving supervised training in order to qualify as a qualified mental health professional.

10. To promulgate regulations for the registration of peer recovery specialists who meet the qualifications, education, and experience requirements established by regulations of the Board of Behavioral Health and Developmental Services pursuant to § 37.2-203.

11. To promulgate regulations for the issuance of temporary licenses to individuals engaged in a counseling residency so that they may acquire the supervised, postgraduate experience required for licensure.

Purpose

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

The purpose of this action is to ensure persons who are granted a temporary license for the purpose of completing a residency in counseling are qualified to provide mental health services to vulnerable individuals and groups. Qualifications for issuance of a resident license will ensure minimal competency to begin supervised practice, and requirements for renewal will ensure that residents have further knowledge of the ethics and standards of practice governing the behavioral health professions in order to protect health, safety, and welfare of the citizens they serve.



Substance

Please describe any changes that are proposed. Please outline new substantive provisions, all substantive changes to existing sections, or both where appropriate. Set forth the specific reasons the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of Virginians.

Current section number	Current requirement	Change, intent, rationale, and likely impact of new requirements
10	Sets out definitions for words and terms used in the chapter	<p>The term “residency” is amended because the Board will be licensing the resident rather than registering the residency.</p> <p>The term “resident” is amended to change Board approval to issuance of a temporary license. The word “submitted” is deleted because resident do not submit the contract; they do provide information about their supervisor, work site, and nature of services.</p> <p>The term “supervisory contract” is defined because it is used in the chapter; the definition clarifies the meaning of such a contract.</p>
20	Sets fees for the resident license in counseling	<p>Some fees in this section are rearranged for more logical order. The <u>new</u> fees are:</p> <p>Application and initial licensure for a resident - \$65 <i>This is the current fee for registration of supervision.</i></p> <p>Education only review - \$75 <i>The Board gets requests from potential applicants for a review of a person’s educational credentials to see whether they meet the qualifications for licensure. Currently, the only way that can be done is for him to submit an application for licensure (which includes many other requirements). This new fee would allow for such a review, which is typically a review of the transcript – course by course – often with request for a syllabus to determine content and a review of the program itself to determine its concentration in counseling. If it is determined that the person’s education does not qualify for licensure, he may be able to remedy the deficiency. If not, he is spared the expense of obtaining the hours of supervised experience and sitting for the examination.</i></p> <p>Annual renewal of a resident in counseling - \$30 <i>Amendments will eliminate the requirement for a resident to notify the board and pay a fee of \$30 every time he/she has a change or addition of supervisor or the work site for supervision. On average, a resident has 2 such changes each year and currently pays a \$30 fee for each.</i></p> <p>Late fee for renewal of a resident in counseling - \$10 <i>By policy, late fees are set at approximately 1/3 of the renewal fee.</i></p>

40	Sets the prerequisites for licensure by examination	There is an editorial change from “registration of supervision” to “board approval of a resident license.”
52	Establishes the requirements for a temporary license as a resident and for the residency itself	<p>In subsection A, the requirements for a temporary resident license are similar to those currently required for board approval to register a residency. The forms require verification of a supervisory contract, identification of the clinical supervisor and location of practice, and an attestation that he will be providing clinical services.</p> <p><i>Since, the Board will be granting a license, there are additional requirements for a report from NPDB and verification of any other jurisdiction in which the applicant may be licensed, certified, or registered that he does not have disciplinary action.</i></p> <p>In subsection B on the residency, there is a clarifying statement that a resident must meet the requirements of section 100 in order to maintain a current, active license.</p> <p>Currently, there are requirements relating to disclosure of information about a person in a residency to ensure the client knows that the resident is not licensed for independent practice and that he has a supervisor to whom he is responsible. Since the resident will now have a license number, that is included in the information that must be provided. Currently, the regulation says the client must be informed about the resident’s status, but it was unclear what that meant. To clarify, the amended rule says that the disclosure must include a statement that the resident does not have authority for independent practice and is under supervision.</p>
70	Sets the requirements for examination for licensure	<p>Subsection A is amended to specify that an applicant must pass the examination within six years of the date of initial issuance of a resident license.</p> <p><i>Current regulations require a residency to be completed within four years (or no less than 21 months). Current regulation also require an applicant to pass the examination within two years of approval to sit for the examination. If an applicant does not pass within that timeframe, he is allowed to reapply and must meet the requirements in effect at that time. Since a person must remain in a residency and practice under supervision until he has passed the examination (even if he has completed the 3,400 hours), and since the resident license is a “temporary” license, the Board has determined that six years should be more than ample time for an applicant to complete the residency and pass the examination. Residents are allowed to take the examination at any point during the residency, so they are encouraged to do so sooner rather than later.</i></p>
100	Sets the requirements for annual renewal of a resident license	<p>Subsection C is added to set the requirements for renewal to include:</p> <p>1) Renewal in the month of initial issuance and allowance to renew up to five times.</p> <p><i>Rather than establishing a set renewal date, which could give some applicants less than a full year of licensure,</i></p>

		<p><i>the Board will renew resident licenses of a rotating monthly basis. The limitation of five renewals is consistent with the nature of a <u>temporary</u> license and will prevent a person from becoming a permanent resident in counseling. The limitation of renewals is consistent with the timeframe for passage of the examination – so all requirements must be met within the six years one can remain in a residency.</i></p> <p>The Board has discussed the possibility of allowing reinstatement for a resident who has to take a break in the residency for good cause. That may be considered in the adoption of permanent regulation but is not necessary during the period when emergency regulations are in effect.</p> <p>2) On the annual renewal form, the resident will be required to attest that a supervisory contract is in effect with a board-approved supervisor for each of the locations at which he is currently providing clinical counseling services.</p> <p><i>Providing such information on an annual basis will be far less burdensome for residents who are currently required to notify the board each time there is an addition or change to their residency. It will also be less burdensome for staff who have to track that information.</i></p> <p>3) The resident will have to attest to completion of three hours of continuing education in ethics, standards of practice, or laws and regulations governing behavioral sciences.</p> <p><i>Supervisors often report that their biggest challenge is helping residents understand the standards of practice and the ethics of the profession. Continuing education in those areas is readily available and will enhance the supervised experience and improve the quality of licensees.</i></p>
<p>Chapter 50 governs marriage and family therapists. The amendments to this chapter are identical to those for professional counseling in chapter 20.</p>		
<p>Chapter 60 governs licensed substance abuse treatment practitioners. The amendments to this chapter are identical to those for professional counseling in chapter 20.</p>		

Issues

Please identify the issues associated with the regulatory change, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary 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, include a specific statement to that effect.

- 1) The advantage of a resident license to the public is greater accountability and information about the residency; there are no disadvantages. There may be an advantage to residents and the licensees or organizations for whom they work under supervision in that some third-party payors may reimburse for their services as a “licensed” professional.
- 2) The primary advantage to the agency is greater awareness of any disciplinary history prior to issuance of a license. There are no disadvantages; fees are established with the intent of covering expenditures directly related to the licensing and discipline of persons with a resident license.
- 3) The Director of the Department of Health Professions has reviewed the proposal and performed a competitive impact analysis. The Board is authorized under § 54.1-2400 “*To promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) which are reasonable and necessary to administer effectively the regulatory system...*” The rules for issuance of a resident license are mandated by the Code and are intended to protect the public receiving such services. Therefore, the proposed amendments are a foreseeable result of the statute requiring the Board to protect the safety and health of the citizens of the Commonwealth.

Alternatives

Please describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulatory change.

There are no alternatives to the regulatory change as promulgation of regulations was mandated by the General Assembly. The purpose of this action is the establishment of a temporary license for persons completing a residency in counseling. Amendments ensure that the public is aware of the residency status and that the license is, in fact, temporary rather than an on-going status.

Public Participation

Please indicate how the public should contact the agency to submit comments on this regulation, including ideas to assist the agency in the development of the regulation and the costs and benefits of the alternatives stated in this notice or other alternatives.

In addition to any other comments, the Board of Counseling is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the agency/board is seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments for the public comment file may do so by mail, email or fax to Elaine Yeatts at elaine.yeatts@dhp.virginia.gov or at 9960 Mayland Drive, Henrico, VA

23233 or by fax at (804) 527-4434.. Comments may also be submitted through the Public Forum feature of the Virginia Regulatory Town Hall web site at: <http://www.townhall.virginia.gov>. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

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

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Agencies | Governor



Agency

Department of Health Professions

Board

Board of Counseling

Chapter

Regulations Governing the Practice of Professional Counseling [18 VAC 115 - 20]

Action	<u>Resident license</u>
Stage	<u>Emergency/NOIRA</u>
Comment Period	Ends 1/22/2020

2 comments

All comments for this forum**[Back to List of Comments](#)****Commenter:** Jane Yaun, for VACSB Regulatory Committee

1/9/20 10:14 am

Clarification requested

1) Asking for clarification to the new language which requires adding a resident's license number to all written communication. (i.e 18VAC115-20-52 B. 10) Does this include clinical documentation/ notes?

2) Same section: The added language regarding informing client that the "resident does not have authority for independent practice and is under supervision" while providing supervisor's name, professional address and phone number, may lead to unnecessary confusion by individual's served as to the qualifications. Curious as to the rationale for the added language. In addition, asking for clarification as to how often the client would need to be provided notice - assumption is only at start of services.

Commenter: Adrien Monti

1/10/20 5:05 pm

Requirement to add resident's license number

18VAC115-20-52 B. 10: The requirement to add a resident's license number to all written communication seems excessive. Each resident will registered with the board by name and will sign all documentation with legal name. Adding the license number would be time consuming and would not clarify or improve upon the clinical record. Recommendation not to require the resident's license number be added to all written communication, but only to require legal name and signature.

**Notice of Intended Regulatory
Action (NOIRA) for Regulations
Governing the Certification of
Rehabilitation Providers**

Agenda Item: NOIRA on the periodic review for Regulations Governing the Certification of Rehabilitation Providers.

Included in your agenda package are:

A copy of the NOIRA on Townhall

No public comments on NOIRA

A copy of the regulations

Board action:

Consideration of a Regulatory Advisory Panel (RAP); or

Make recommendations that no changes be made to the regulations; or

Make recommended changes to the regulations to present to the Board.



townhall.virginia.gov

Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Board of Counseling, Department of Health Professions
Virginia Administrative Code (VAC) citation(s)	18VAC115-40
Regulation title(s)	Regulations Governing the Certification of Rehabilitation Providers
Action title	Periodic review
Date this document prepared	6/7/19

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

Brief Summary

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

The intent of the amendments resulting from the periodic review is to update regulations, clarify language, and achieve some consistency among standards of practice and renewal requirements for certified and registered professions.

The Board will consider whether the addition of some hours of continuing education are necessary to ensure continued competency and will also add grounds for disciplinary actions that are found in all other chapters but are missing in Chapter 40.

Acronyms and Definitions

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

N/A

Mandate and Impetus

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

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

Legal Basis

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

Regulations are promulgated under the general authority of Chapter 24 of Title 54.1 of the Code of Virginia. Section 54.1-2400, which provides the Board of Counseling the authority to promulgate regulations to administer the regulatory system:

§ 54.1-2400 -General powers and duties of health regulatory boards

The general powers and duties of health regulatory boards shall be:

- 1. To establish the qualifications for registration, certification or licensure in accordance with the applicable law which are necessary to ensure competence and integrity to engage in the regulated professions.*
- 2. To examine or cause to be examined applicants for certification or licensure. Unless otherwise required by law, examinations shall be administered in writing or shall be a demonstration of manual skills.*
- 3. To register, certify or license qualified applicants as practitioners of the particular profession or professions regulated by such board.*
- ...*
- 6. To promulgate regulations in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.) which are reasonable and necessary to administer effectively the regulatory system. Such regulations shall not conflict with the purposes and intent of this chapter or of Chapter 1 (§ [54.1-100](#) et seq.) and Chapter 25 (§ [54.1-2500](#) et seq.) of this title. ...*

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

§ 54.1-3505. 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: ...

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....

Article 2. Rehabilitation Providers.

§ 54.1-3510. Definitions.

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

"Certified rehabilitation provider" means a person who is certified by the Board as possessing the training, the skills and the experience as a rehabilitation provider to form an opinion by discerning and evaluating, thereby allowing for a sound and reasonable determination or recommendation as to the appropriate employment for a rehabilitation client and who may provide vocational rehabilitation services under subdivision A 3 of § 65.2-603 that involve the exercise of professional judgment.

"Professional judgment" includes consideration of the client's level of disability, functional limitations and capabilities; consideration of client aptitudes, career and technical skills and abilities; education and pre-injury employment; and identification of return-to-work options and service needs which culminate in the determination or recommendation of appropriate employment for the rehabilitation client.

§ 54.1-3513. Restriction of practice; use of titles.

A. No person, other than a person licensed by the Boards of Counseling; Medicine; Nursing; Optometry; Psychology; or Social Work, shall hold himself out as a provider of rehabilitation services or use the title "rehabilitation provider" or a similar title or any abbreviation thereof unless he holds a valid certificate under this article.

B. Subsection A shall not apply to employees or independent contractors of the Commonwealth's agencies and sheltered workshops providing vocational rehabilitation services, under the following circumstances: (i) such employees or independent contractors are not providing vocational rehabilitation services under § 65.2-603 or (ii) such employees are providing vocational rehabilitation services under § 65.2-603 as well as other programs and are certified by the Commission on Rehabilitation Counselor Certification (CRCC) as certified rehabilitation counselors (CRC) or by the Commission on Certification of Work Adjustment and Vocational Evaluation Specialists (CCWAVES) as Certified Vocational Evaluation Specialists (CVE).

§ 54.1-3514. Certification of existing providers.

The Board of Counseling upon receipt of a completed application and payment of the prescribed fee on or before June 30, 1995, shall issue a certificate to any person who was actively engaged in providing rehabilitation services on January 1, 1994.

§ 54.1-3515. Certification renewal of individuals who became certified under the provisions of § 54.1-3514.

After July 1, 2001, the Board of Counseling shall not renew a certificate to any person who became certified under the provisions of § [54.1-3514](#) without documentation that such person meets the current requirements for certification established by the Board, unless such person provided rehabilitation services for at least two years immediately preceding July 1, 1997, and has done so continuously since that date without interruption and received a passing score on a Board approved examination. The Board of Counseling, pursuant to its authority in this section and in § [54.1-3505](#), shall adopt regulations to implement the 1997 revisions of the law relating to certified rehabilitation providers in 280 days or less of the date of the enactment of such revisions.

Purpose

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

Additional standards of conduct and causes for disciplinary action will provide further guidance to licensees on the expectations for ethical practice and give the Board more explicit grounds on which to discipline practitioners for the purpose of protecting the health, safety and welfare of the public they serve.

Substance

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

In addition to edits for clarity and updating of terminology, the following changes will be considered:

In section 22, clarify that unresolved disciplinary action in another jurisdiction may be grounds to deny certification, but the board will consider each on a case-by-case basis.

In section 25, require “verification” of any other mental health or health license in another jurisdiction. Documentation is not necessary, provided the verification comes from the other jurisdiction; the only “licenses” the board is concerned about are mental health or health licenses.

In section 25, specify that a person who is applying for certification based on national certification or certification by another state, pursuant to subsection C of 18VAC115-40-22, must provide documentation of that certification.

In section 26, replace the words “members” with the word “persons” who are in group supervision.

In section 30, the board will consider adding some hours of continuing education for renewal, consistent with other registered or certified professions under the board. The board will seek public comment on the intent to add a CE requirement.

In section 30, the board will consider changing the renewal date from January 31st to June 30th for consistency with renewal for other professions.

In subsection B of section 30, the board will consider what “evidence” of continuing ability to perform the functions of a rehabilitation provider should be required for reinstatement, such as continuing education and/or practice in another state.

In section 38, the board will add the requirement for notification of a name change and will change the requirement from 30 to 60 days for submission of information on changes.

In section 50, the board will consider adding the following grounds for disciplinary action that exist in other regulations for the Board of Counseling:

- Conducting one’s practice in such a manner so as to make it a danger to the health and welfare of one’s clients or to the public;
- Performance of functions outside the board-certified area of competency;
- Intentional or negligent conduct that causes or is likely to cause injury to a client or clients;
- Performance of an act likely to deceive, defraud, or harm the public;
- Failure to cooperate with an employee of the Department of Health Professions in the conduct of an investigation;
- Failure to report evidence of child abuse or neglect as required in § 63.2-1509 of the Code of Virginia, or elder abuse or neglect as required in § 63.2-1606 in the Code of Virginia;
- Knowingly allowing persons under supervision to jeopardize client safety or provide care to clients outside of such person’s scope of practice or area of responsibility; and
- Violating any provisions of this chapter, including practice standards set forth in 18VAC115-40-40.

Alternatives

Please describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulatory change.

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

Periodic Review and

Small Business Impact Review Announcement

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

Public Participation

Please indicate how the public should contact the agency to submit comments on this regulation, including ideas to assist the agency in the development of the regulation and the costs and benefits of the alternatives stated in this notice or other alternatives.

Also, indicate whether a public hearing is to be held to receive comments. Please include one of the following choices: 1) a panel will be appointed and the agency's contact if you're interested in serving on the panel is _____; 2) a panel will not be used; or 3) public comment is invited as to whether to use a panel to assist in the development of this regulation.

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

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

Anyone wishing to submit comments may do so via the Regulatory Townhall website , www.townhall.virginia.gov, or by mail, email or fax to Elaine Yeatts, Agency Regulatory Coordinator, 9960 Mayland Drive, Henrico, VA 23233 or elaine.yeatts@dhp.virginia.gov or by fax to (804) 527-4434. Written comments must include the name and address of the commenter. In order to be considered comments must be received by the last day of the public comment period.

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

A regulatory panel will not be used to develop the proposed regulation, which will be drafted by the Regulatory Committee of the Board.

Commonwealth of Virginia



REGULATIONS

**GOVERNING THE CERTIFICATION OF
REHABILITATION PROVIDERS**

VIRGINIA BOARD OF COUNSELING

Title of Regulations: 18 VAC 115-40-10 et seq.

**Statutory Authority: §§ 54.1-2400 and Chapter 35 of Title 54.1
of the *Code of Virginia***

Revised Date: February 8, 2017

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certification

Initial certification by endorsement: Processing and initial certification	\$115
Certification renewal	\$65
Duplicate certificate	\$10
Late renewal	\$25
Reinstatement of a lapsed certificate	\$125
Replacement of or additional wall certificate	\$25
Returned check	\$35
Reinstatement following revocation or suspension	\$600

B. Fees shall be paid to the board. All fees are nonrefundable.

Part II. Requirements for Certification.

18VAC115-40-22. Criteria for eligibility.

A. Education and experience requirements for certification are as follows:

1. Any baccalaureate degree from a regionally accredited college or university or a current registered nurse license in good standing in Virginia; and
2. Documentation of 2,000 hours of supervised experience in performing those services that will be offered to a workers' compensation claimant under § 65.2-603 of the Code of Virginia. Experience may be acquired through supervised training or experience or both. A supervised internship in rehabilitation services may count toward part of the required 2,000 hours. Any individual who does not meet the experience requirement for certification must practice under the supervision of an individual who meets the requirements of 18VAC115-40-27. Individuals shall not practice in an internship or supervisee capacity for more than five years.

B. A passing score on a board-approved examination shall be required.

C. The board may grant certification without examination to applicants certified as rehabilitation providers in other states or by nationally recognized certifying agencies, boards, associations and commissions by standards substantially equivalent to those set forth in the board's current regulation.

18VAC115-40-23 to 18VAC115-40-24. (Reserved.)

18VAC115-40-25. Application process.

The applicant shall submit to the board:

1. A completed application form;
2. The official transcript or transcripts submitted from the appropriate institutions of higher education;
3. Documentation, on the appropriate forms, of the successful completion of the supervised experience requirement of 18VAC115-40-26. Documentation of supervision obtained outside of Virginia must include verification of the supervisor's out-of-state license or certificate; and
4. A current report from the U.S. Department of Health and Human Services National Practitioner Data Bank (NPDB); and
5. Documentation of the applicant's national or out-of-state license or certificate in good standing where applicable.

18VAC115-40-26. Supervised experience requirement.

The following shall apply to the supervised experience requirement for certification:

1. On average, the supervisor and the supervisee shall consult for two hours per week in group or personal instruction. The total hours of personal instruction shall not be less than 100 hours within the 2,000 hours of experience. Group instruction shall not exceed six members in a group.
2. Half of the personal instruction contained in the total supervised experience shall be face-to-face between the supervisor and supervisee. A portion of the face-to-face instruction shall include direct observation of the supervisee-rehabilitation client interaction.

18VAC115-40-27. Supervisor requirements.

A. A supervisor shall:

1. Be a licensed professional counselor, licensed psychologist, licensed clinical social worker, licensed marriage and family therapist, licensed substance abuse treatment practitioner, licensed physician or licensed registered nurse with a minimum of one year of experience in rehabilitation service provision;
2. Be a rehabilitation provider certified by the board who has national certification in rehabilitation service provision as outlined in subsection C of 18VAC115-40-22; or
3. Have two years experience as a board certified rehabilitation provider.

B. The supervisor shall assume responsibility for the professional activities of the supervisee.

C. At the time of application for certification by examination, the supervisor shall document for the board: (i) credentials to provide supervision in accordance with this section, (ii) the applicant's total

hours of supervision, (iii) length of work experience, (iv) competence in rehabilitation service provision, and (v) any needs for additional supervision or training.

D. Supervision by any individual whose relationship to the supervisee compromises the objectivity of the supervisor is prohibited. This includes but is not limited to immediate family members (spouses, parents, siblings, children and in-laws).

Part III. Examinations.

18VAC115-40-28. General examination requirements.

Every applicant for certification as a rehabilitation provider shall take a written examination approved by the board and achieve a passing score as determined by the board.

18VAC115-40-29. (Reserved.)

Part IV. Renewal and Reinstatement.

18VAC115-40-30. Annual renewal of certificate.

Every certificate issued by the board shall expire on January 31 of each year.

1. To renew certification, the certified rehabilitation provider shall submit a renewal form and fee as prescribed in 18VAC115-40-20.
2. Failure to receive a renewal notice and form shall not excuse the certified rehabilitation provider from the renewal requirement.

18VAC115-40-35. Reinstatement.

A. A person whose certificate has expired may renew it within one year after its expiration date by paying the renewal fee and the late renewal fee prescribed in 18VAC115-40-20.

B. A person who fails to renew a certificate for one year or more shall apply for reinstatement, pay the reinstatement fee and submit evidence regarding the continued ability to perform the functions within the scope of practice of the certification.

18VAC115-40-36 to 18VAC115-40-37. (Reserved.)

18VAC115-40-38. Change of address.

A certified rehabilitation provider whose address of record or public address, if different from the address of record, has changed shall submit the new address in writing to the board within 30 days of such change.

18VAC115-40-39. (Reserved.)

Part V. Standards of Practice; Disciplinary Actions; Reinstatement.

18VAC115-40-40. Standards of practice.

A. The protection of the public health, safety and welfare, and the best interest of the public shall be the primary guide in determining the appropriate professional conduct of all persons whose activities are regulated by the board.

B. Each person certified by the board shall:

1. Provide services in a manner that is in the best interest of the public and does not endanger the public health, safety, or welfare.

2. Provide services only within the competency areas for which one is qualified by training or experience.

3. Not provide services under a false or assumed name, or impersonate another practitioner of a like, similar or different name.

4. Be aware of the areas of competence of related professions and make full use of professional, technical and administrative resources to secure for rehabilitation clients the most appropriate services.

5. Not commit any act which is a felony under the laws of this Commonwealth, other states, the District of Columbia or the United States, or any act which is a misdemeanor under such laws and involves moral turpitude.

6. Stay abreast of new developments, concepts and practices which are important to providing appropriate services.

7. State a rationale in the form of an identified objective or purpose for the provision of services to be rendered to the rehabilitation client.

8. Not engage in offering services to a rehabilitation client who is receiving services from another rehabilitation provider without attempting to inform such other providers in order to avoid confusion and conflict for the rehabilitation client.

9. Represent accurately one's competence, education, training and experience.

10. Refrain from undertaking any activity in which one's personal problems are likely to lead to inadequate or harmful services.

11. Not engage in improper direct solicitation of rehabilitation clients and shall announce services fairly and accurately in a manner which will aid the public in forming their own informed judgments, opinions and choices and which avoids fraud and misrepresentation through sensationalism, exaggeration or superficiality.

12. Recognize conflicts of interest and inform all parties of the nature and directions of loyalties and responsibilities involved.

13. Report to the board known or suspected violations of the laws and regulations governing the practice of rehabilitation providers.

14. Report to the board any unethical or incompetent practices by other rehabilitation providers that jeopardize public safety or cause a risk of harm to rehabilitation clients.

15. Provide rehabilitation clients with accurate information of what to expect in the way of tests, evaluations, billing, rehabilitation plans and schedules before rendering services.

16. Provide services and submission of reports in a timely fashion and ensure that services and reports respond to the purpose of the referral and include recommendations, if appropriate. All reports shall reflect an objective, independent opinion based on factual determinations within the provider's area of expertise and discipline. The reports of services and findings shall be distributed to appropriate parties and shall comply with all applicable legal regulations.

17. Specify, for the referral source and the rehabilitation client, at the time of initial referral, what services are to be provided and what practices are to be conducted. This shall include the identification, as well as the clarification, of services that are available by that member.

18. Assure that the rehabilitation client is aware, from the outset, if the delivery of service is being observed by a third party. Professional files, reports and records shall be maintained for three years beyond the termination of services.

19. Never engage in nonprofessional relationships with rehabilitation clients that compromise the rehabilitation client's well-being, impair the rehabilitation provider's objectivity and judgment or increase the risk of rehabilitation client exploitation.

20. Never engage in sexual intimacy with rehabilitation clients or former rehabilitation clients, as such intimacy is unethical and prohibited.

18VAC115-40-50. Grounds for revocation, suspension, probation, reprimand, censure, denial of renewal of certificate; petition for rehearing.

Action by the board to revoke, suspend, decline to issue or renew a certificate, to place such a certificate holder on probation or to censure, reprimand or fine a certified rehabilitation provider may be taken in accord with the following:

1. Procuring a license, certificate or registration by fraud or misrepresentation.

2. Violation of, or aid to another in violating, any regulation or statute applicable to the provision of rehabilitation services.

3. The denial, revocation, suspension or restriction of a registration, license or certificate to practice in another state, or a United States possession or territory or the surrender of any such registration, license or certificate while an active administrative investigation is pending.

4. Conviction of any felony, or of a misdemeanor involving moral turpitude.

5. Providing rehabilitation services without reasonable skill and safety to clients by virtue of physical or emotional illness or substance abuse.

18VAC115-40-60. [Repealed]

18VAC115-40-61. Reinstatement following disciplinary action.

A. Any person whose certificate has been revoked, suspended or denied renewal by the board under the provisions of 18VAC115-40-50 must submit a new application for reinstatement of certification.

B. The board in its discretion may, after a hearing, grant the reinstatement sought in subsection A of this section.

C. The applicant for such reinstatement, if approved, shall be certified upon payment of the appropriate fee applicable at the time of reinstatement.