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Resubmission of Re-Proposed Regulation Agency Background Document

Agency name	Board of Counseling, Department of Health Professions
Virginia Administrative Code (VAC) citation(s)	18VAC115-20-10 et seq.
Regulation title(s)	Regulations Governing the Practice of Professional Counseling
Action title	Requirement for accreditation of educational programs
Date this document prepared	January 28, 2019

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

Brief summary

Please provide a brief summary (preferably no more than 2 or 3 paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

In response to a petition for rulemaking in 2015, the Board published a Notice of Intended Regulatory Action to add a requirement for all counseling programs leading to a license as a professional counselor to be clinically-focused and accredited by the Council for Accreditation of Counseling and Related Educational Programs (CACREP) or its affiliate, the Council on Rehabilitation Education (CORE). The regulation would be a phased-in requirement, allowing seven years from the effective date for students to complete their education in a non-CACREP program and for programs to achieve accreditation standards.

Proposed regulations were published in May of 2017. Following the comment period, the Board made several substantive changes to its proposal and submitted a re-proposed regulation in August of 2017. In November of 2017, the Board elected to withdraw its proposal to allow additional time for discussion and collaboration.

At its meeting in November of 2018, the Board voted to reinstate the proposed stage with the same regulatory language submitted in August of 2017. Since that time, there are now 15 Virginia institutions that already have CACREP accreditation in Clinical Mental Health Counseling programs; two more (Longwood and Liberty University Online) are in the process and working towards accreditation. When the CACREP accreditation proposal was originally submitted by the Board, there were 12 Virginia programs with CACREP accreditation. Across the United States, there are 331 programs in Clinical Mental Health Counseling with CACREP accreditation. There are CACREP-accredited counselor education programs in all 50 states, the District of Columbia and Puerto Rico, achieved in 2018 when Alaska became the 50th state with a CACREP-accredited program.

At George Mason University (which is not currently CACREP-accredited), the Community Agency Counseling program is a 52-hour master's degree, which does not meet the current requirement of 60 hours for licensure as a professional counselor in Virginia. However, George Mason's website says that the "additional 8 credits of coursework can be taken while enrolled in our master's in Community Agency Counseling program, by applying to and enrolling in our post-master's counseling certificate program, and/or by completing the additional credits of coursework at another university." Therefore, it does appear that Mason has the coursework and faculty capacity to meet CACREP accreditation standards, if the University elects to seek accreditation for its program.

Finally, the American Association of State Counseling Boards (AASCB), the Association for Counselor Education and Supervision (ACES), the American Mental Health Counselors Association (AMHCA), and the National Board for Certified Counselors (NBCC) worked together in 2017 to create a Portability Task Force with one goal: a safe, clear, reasonable portability process for all current and future counselors. Its recommendation for portability (licensure by across states) is for the applicant to comply with one of the following:

- (a) Meets all academic, exam, and post-graduate supervised experience standards as adopted by the state counseling licensure board.
- (b) Holds the National Certified Counselor (NCC) credential, in good standing, as issued by the National Board for Certified Counselors (NBCC).
- (c) Holds a graduate-level degree from a program accredited by the Council for Accreditation of Counseling & Related Educational Programs (CACREP).

The Board of Counseling proposed regulation would facilitate portability by requiring graduation from a CACREP-accredited program.

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.

CACREP = Council for Accreditation of Counseling and Related Educational Programs
CCMHC = Certified Clinical Mental Health Counselor
CORE = Council on Rehabilitation Education

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including: 1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable; and 2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person'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. ...*

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Describe the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

The Board decided to publish a Notice of Intended Regulatory Action in response to a petition for rulemaking to provide a clearer standard for students, greater consistency in approval of residencies by the Board, portability of educational qualification for Virginia graduates, and for acceptance of practice by federal agencies.

In recent years, the Board of Counseling has worked towards greater professional identity for counseling to help the public understand the clinical services a licensed professional counselor is qualified to provide. Legislation passed in 2013 (HB1666) amended the definition of “counseling” and “professional counselor” to clarify professional identity and distinguish the profession from others that include the methodology of “counseling” in their scope of practice. However, the Board continues to review applications for licensure from students whose educational programs are not clearly “counseling” in their identity. The lack of clarity in its regulations has been frustrating for the Board and very problematic for some applicants who have obtained a post-graduate degree that may or may not qualify them for a residency and ultimately licensure.

CACREP was established in 1981 to achieve some consistency in counseling educational programs. It has been recognized by the Council for Higher Education Accreditation, a national advocate and institutional voice for self-regulation of academic quality through accreditation. CHEA is an association of 3,000 degree-granting colleges and universities and recognizes 60 institutional and programmatic accrediting organizations. CHEA recognition provides assurance to the public and higher education institutions that CACREP is a legitimate accrediting body with authority granted by a regulating body who has reviewed the standards, processes, and policies of CACREP. CHEA recognition also assures the public that the programs that achieve CACREP accreditation are legitimate degree programs. Both CHEA and CACREP assist the public in avoiding spending money on illegitimate degrees promoted by degree mills and accreditation mills. One of the goals of CACREP is to establish a uniform set of educational requirements across the United States to facilitate portability of licensure from state to state.

Three federal agencies have made graduation from a CACREP accredited program a requirement for independent practice in counseling. The Department of Veterans Affairs (VA) released qualification standards that formally recognize licensed professional mental health counselors who have graduated from CACREP accredited programs as mental health specialists within the Veterans Health Administration. The Department of Defense will require a CACREP accredited Clinical Mental Health Counseling or Mental Health Counseling degree in order to obtain the TRICARE Certified Mental Health Counselor credential, which grants the authority to provide independent care to TRICARE beneficiaries after December 31, 2016. Prior to this legislation, mental health counselors could not practice independently in the TRICARE system. Beginning in July 2011, only licensed professional counselors with a degree from a CACREP accredited program can be employed as Fully Functioning Army Substance Abuse Program Practitioner. With a large military presence in Virginia, there is a need to equate graduation from a CACREP-accredited program with licensure to avoid public confusion and give licensees access to federal agencies.

Legislation recently passed in North Carolina and Kentucky mandate that licensure as a professional counselor will only be granted to persons who have earned a master’s degree in

counseling from an institution that is accredited by CACREP. The delayed effective date of the proposed regulation would give Virginia applicants and institutions a seven years for compliance.

Consistency and quality in educational preparation for professional counselors will provide greater assurance to clients seeking their services that they have been adequately prepared and appropriately licensed to protect public health and safety.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the “Detail of changes” section below.

In the re-proposed regulation, the Board has added possible alternatives to the CACREP-only accreditation and established a pathway to licensure for persons who did not graduate from a CACREP-accredited program. In addition to CACREP or CORE, the regulation would recognize “any other accrediting body acceptable to the board.”

Subsection C is also added to allow an applicant who did not graduate from an accredited counseling program to be qualified for licensure by examination by providing documentation of the Certified Clinical Mental Health Counselor credential from the National Board for Certified Counselors or another national credential or certification recognized by the Board.

Issues

Please identify the issues associated with the proposed regulatory action, 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, please indicate.

- 1) The primary advantage to the public is greater consistency in the educational programs of persons licensed as professional counselors in Virginia. In the re-proposed regulation, a comparable accrediting body in counseling could seek recognition by the Board, and persons who do not currently qualify for licensure by examination or endorsement would have another pathway to licensure. There are no disadvantages to the public.
- 2) The primary advantage to the Commonwealth would be greater efficiency in reviewing applications for licensure, as it would eliminate the need to look at the current qualifications for an educational program and rely on accreditation by CACREP or CORE. It would facilitate approval of applicants to begin supervision and to be ultimately licensed with less delay in the process. There are no disadvantages.
- 3) The Board is authorized under § 54.1-2400 to establish the qualifications for licensure that are necessary to ensure the competence and integrity of licensees to engage in the practice of counseling. The primary issue raised with requiring CACREP (or CORE as an affiliate of CACREP) accreditation is the concept of granting a “monopoly” for one accrediting body over which the Board has no direct control. The Board of Counseling

has found that it has neither the resources nor the expertise to examine counseling programs across the country to determine their rigor or assess the quality of the education in those programs. The proposal to establish national accreditation for counseling programs is intended to provide clear guidance to applicants and a consistent standard on which to determine their qualification for licensure.

The reliance on an independent, national accrediting body is common for all health and mental health licensure in Virginia and other states. For example, the Board of Medicine recognizes the American Medical Association's Liaison Committee on Medical Education or the Committee for the Accreditation of Canadian Medical Schools or any other organization approved by the board. The Board of Social Work recognizes the Council on Social Work Education as the accrediting body for educational programs. Other boards have similar criteria for accreditation. The only health regulatory board that assesses the quality of professional education is Nursing, and it has a core of staff persons across the state employed that purpose. Even the Board of Nursing is currently moving in the direction of requiring national accreditation for RN education programs.

The only other accrediting body advocated by those opposed to CACREP is the Masters in Psychology and Counseling Accreditation Council (MPCAC). It appears that programs accredited by MPCAC are primarily psychology-related and would not meet the current requirements of the Board for counseling education. 18VAC115-20-49 currently specifies that: 1) There must be a sequence of academic study with the expressed intent to prepare **counselors** as documented by the institution; and 2) There must be an **identifiable counselor training faculty** and an identifiable body of students who complete that sequence of academic study. Accreditation by MPCAC would not qualify an educational program by current standards because its primary emphasis is psychology rather than counseling. CACREP is the only identified accrediting body for **counseling** education.

Concern was also expressed by retaliation from neighboring states. Yet, the General Assembly of North Carolina passed SB279 in October of 2015 to require a master's degree in counseling or related field from an institution that is accredited by CACREP for an applicant who applies on or after July 1, 2022 (seven years to grandfather those currently in process and allow all programs time to complete accreditation standards). The proposal in Virginia would likewise have a seven-year delayed effective date.

Accreditation by a professional, national body is the standard for measuring minimal competency for other health and mental health professions. It contributes to portability, eliminates uncertainty for applicants, and assures the educational foundation for safe and effective practice by licensees.

Therefore, the requirement to have applicants for licensure graduate from a degree program accredited by a national accrediting program is a foreseeable result of the statute requiring the Board to ensure licensees have the necessary qualifications, competence, and integrity to engage in the practice of counseling given the limitations on the Board's resources to perform such a service itself and the widespread use of this model across the

health licensing boards. Any restraint on competition that results from this regulation is in accord with the General Assembly's policy as articulated in § 54.1-100 and is necessary for the preservation of the health, safety, and welfare of the public and will further the public's need for assurances of initial professional ability.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

The proposal is consistent with federal requirements for employment of counselors and reimbursement under TRICARE and similar payment plans for counseling services.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

There are no localities particularly affected.

Public participation

Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulated community.

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 may do so via the Regulatory Townhall website, www.townhall.virginia.gov, or by mail to Elaine Yeatts at Department of Health Professions, 9960 Mayland Drive, Suite 300, Richmond, VA 23233 or elaine.yeatts@dhp.virginia.gov or by fax to (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.

Economic impact

Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact.

<p>Projected cost to the state to implement and enforce the proposed regulation, including: a) fund source / fund detail; and b) a delineation of one-time versus on-going expenditures</p>	<p>There are no costs for implementation or enforcement; the proposal may actually reduce some of the costs incurred in hiring outside reviewers to go over transcripts and educational qualifications.</p>
<p>Projected cost of the new regulations or changes to existing regulations on localities.</p>	<p>There are no costs to localities.</p>
<p>Description of the individuals, businesses, or other entities likely to be affected by the new regulations or changes to existing regulations.</p>	<p>The entities that would be affected would be counseling programs that are not CACREP or CORE accredited.</p>
<p>Agency's best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that: a) is independently owned and operated and; b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>Only one entity in Virginia with a counseling program - George Mason University, since Longwood is in the process of obtaining accreditation. There are no small businesses affected.</p>
<p>All projected costs of the new regulations or changes to existing regulations for affected individuals, businesses, or other entities. Please be specific and include all costs including: a) the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; and b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.</p>	<p>Accreditation costs for CACREP include: Application process fee - \$2,500 Site visit fee - \$2,000 per visitor for 2-5 persons Annual maintenance fee (2015) - \$2,976 Student graduate certificate - \$50</p> <p>If an applicant has not graduated from a CACREP-accredited program and does not qualify for licensure by endorsement, the cost of obtaining the CCMHC credential is \$250.</p>
<p>Beneficial impact the regulation is designed to produce.</p>	<p>More consistency in educational programs, greater assurance of quality, and facilitation of licensing for professional counselors.</p>

Alternatives

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

There are no less intrusive alternatives that meet the essential purpose of the action which is to establish an accreditation standard for counseling education. In the re-proposed regulation, the Board has offered alternatives to CACREP accreditation to educational institutions and individual applicants.

Regulatory flexibility analysis

Pursuant to § 2.2-4007.1B of the Code of Virginia, please describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

The agency has not identified any alternative regulatory methods consistent with health and safety of the public.

Public comment

Please summarize all comments received during the public comment period following the publication of the NOIRA, and provide the agency response.

There were 328 comments to the NOIRA posted on the Virginia Regulatory Townhall in 2015:

Reasons for opposition included:

- Lack of empirical evidence that CACREP graduates are better prepared or CACREP programs superior
- Disenfranchising counseling psychology programs and art therapy programs
- Authority being ceded to an accrediting body to determine educational qualification for licensure; accreditation and licensing board should be separate; eliminates state autonomy
- Limits availability because experienced, non-CACREP counselors would not be able to practice in Virginia; would affect 400,000 counselors
- Would take away careers and jobs; push out seasoned counselors who would have to leave the state
- Other accrediting bodies are older and more established
- Claim that ACA opposes

- Reduces diversity in the field; stop the “dystopian” drive
- Will end reciprocity with MD and DC
- CORE not specifically listed; only as an affiliate of CACREP

Board Response to opposition:

- There is some empirical evidence that students from CACREP programs are better prepared and pass the national examination at a higher rate. There is also an acknowledgement by the federal mental health plans that CACREP accreditation provides some assurance of competency.
- Counseling psychology programs and art therapy programs currently do not meet the requirements of section 49, so change in subsection B would not affect that situation.
- All professions licensed by boards within the Department of Health Professions rely on national accrediting bodies to validate educational programs. The Board reviewed a chart of other professions and the accreditation required for educational programs. Individual licensing boards do not have the resources or expertise to “accredit” educational programs.
- The amended regulation would only affect applicants after seven years from the effective date of the regulation; it would not affect current counselors or counselors applying for licensure by endorsement. A number of commenters misunderstood the intent and purpose of the regulatory change and were concerned about losing their licenses.
- There are no other known national accrediting bodies specific for counseling education.
- There is support from all national counseling associations and organizations, including the American Counseling Association and the American Association of State Counseling Boards.
- Currently, there is no reciprocity with MD or DC; counselors licensed in those jurisdictions could continue to apply for licensure by endorsement.
- In the proposed regulation, CORE is specifically listed.

Reasons for support included:

- Council for Higher Education only recognizes CACREP and CORE for accreditation in counseling
- Endorsement will take care of counselors licensed in other states
- Proposal has a generous grandfathering provision (7 years from effective date) for programs to become CACREP accredited
- Would not change licensure status for any currently-licensed counselor
- Board has already take action to recognize counseling as the only discipline eligible for licensure
- Consistent with the established standard for federal agencies and TRICARE
- Reduces confusion among applicants about acceptability of degree for licensure
- Strengthens identity of counseling as a profession, on par with other professions

Board response to comments in support:

The Board concurred with the comments and voted to move forward with a proposed amendment.

Family impact

Please assess the impact of this regulatory action on the institution of the family and family stability including to what extent 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.

There is no impact on the institution of the family and family stability.

Detail of changes

Please list all changes that are being proposed and the consequences of the proposed changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation.

Current section number	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
49	<p>Sets out the requirements for an educational program to be accepted for licensure as a professional counselor.</p> <p>Subsection A requires that a program must provide a graduate degree from a program that prepares individuals to practice counseling, as defined in § 54.1-3500 of the Code of Virginia, which is offered by a college or university accredited by a regional accrediting agency and which meets the following criteria:</p> <ol style="list-style-type: none"> 1. There must be a sequence of academic study with the expressed intent to prepare counselors as documented by the institution; 2. There must be an identifiable counselor training faculty and an identifiable body of students who complete that sequence of academic study; and 3. The academic unit must have clear authority and primary responsibility for the core and specialty areas. 	<p>Subsection B is amended to provide that: After (date of 7 years from the effective date of the regulation), only programs that are approved by CACREP or CORE are recognized as meeting the requirements of subsection A of this section.</p> <p>In the re-proposed regulation, the amendment in subsection B will allow the acceptance of other accrediting bodies if they meet the standards set forth in subsection A for the accreditation of programs that are <u>counseling</u> with an identifiable counselor faculty and a sequence of study with the intent to prepare <u>counselors</u>.</p> <p>In the re-proposed regulation, subsection C is added to provide a pathway to licensure for persons who did not graduate from a CACREP-accredited program and have not been licensed in another state and practicing for at least 24 out of the past 60 months and are therefore not eligible for licensure by endorsement. An applicant may qualify for licensure by examination by providing documentation of the Certified Clinical Mental Health Counselor credential from the National Board for Certified Counselors or another national credential or certification recognized by the Board.</p>

		<p><i>The CCMHC credential can be obtained by completion of at least 60 semester or 90 quarter hours of graduate-level academic credit in counseling from a regionally accredited program. Course content must be specific to clinical counseling, and supervised field experience is required as part of the academic program. The applicant must document 3,000 hours of postgraduate clinical experience and have a passing score on the national examination for clinical mental health counseling. A prerequisite for the CCMHC is the National Certified Counselor credential.</i></p> <p><i>If an applicant has not completed a CACREP-accredited program, the CCMHC provides another check of qualifications by a nationally-recognized credentialing body. Standards for the CCMHC credential are similar to those of Virginia requirements for a licensed professional counselor. By having the education reviewed by the National Board for Certified Counselors, the Board can be assured that the applicant has graduated from a counseling program that would meet the requirements for Virginia licensure.</i></p>
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