



Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Board of Counseling
Virginia Administrative Code (VAC) citation	18VAC115-20-10 et seq. 18VAC115-50-10 et seq. 18VAC115-60-10 et seq.
Regulation title	Regulations Governing the Practice of Professional Counseling Regulations Governing the Practice of Marriage and Family Therapy Regulations Governing the Licensure of Substance Abuse Practitioners
Action title	Periodic review
Date this document prepared	5/13/14

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

In 2011, the Board began a comprehensive review of current regulations governing the practice of professional counseling, marriage and family therapy and licensed substance abuse practitioners. It determined that it is essential to continue the regulation of these licensed professions as mandated by the Code of Virginia, but that there are modifications necessary to clarify and update requirements. Subsequently, the Board amended Chapter 20 in response to the Governor's Regulatory Reform Project (Action 3929/Stage 6519), but did not complete its review of Chapters 50 and 60 until recently. The Board's intent is to amend all three chapters in this action for consistency in requirements for licensed professionals.

The goal of the action is to ensure accountability and competency for residents, supervisors and licensees who provide clinical services to individuals and families in need of counseling.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

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. ...*

The specific authority for the promulgation of regulations for counseling-related professions is found in Section 54.1-3505 of the Code of Virginia:

§ 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.*

Need

Please detail the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, delineate any potential issues that may need to be addressed as the regulation is developed.

Since it is the Board's primary responsibility to license persons with competency adequate to safely treat the public, certain amendments to definitions, coursework, and requirements for supervised experience are being considered. The intent of the amendments is to ensure that applicants have essential courses and experiences to prepare them for independent practice as licensed practitioners. Without minimal competency in the provision of clinical services, a licensee could provide inadequate or harmful care to a person with mental health issues.

Substance

Please detail any changes that will be proposed. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed.

In addition to editing and deleting out-dated language in the regulations, the Board proposes to adopt changes in Chapter 20, 50 and 60 that will make general requirements for each profession consistent. In summary the substance of the change is:

Definitions.

- Delete terms that are no longer defined in the Code or used in the regulation and to update certain definitions, such as the term “internship.”
- Add definitions for terms that require some clarification, such as “face-to-face” or have been added to the regulation, such as “ancillary services.”
- Clarify that “supervision” means provision of guidance and instruction *that is specific to the clinical services being performed.*

Fees.

- Delete outdated language on one-time fee reduction and payment to a contractor.

Licensure by examination.

- Update language relating to submission of transcripts to allow electronic transfer of documents directly from the educational program to the Board.
- Clarify that the board requires verification of a “mental health or health” professional license held in another jurisdiction and that there must be no unresolved disciplinary action on that license or certificate.

Licensure by endorsement.

- Add a requirement for a current report from the national practitioner databank to check on discipline in other states and malpractice history.
- Add a requirement for an affidavit that the applicant has read and understood the laws and regulations governing the profession and the Board.
- Modify the clinical experience required for applicants who do not meet Virginia’s education and residency requirements to allow licensure for those who have clinical practice for 24 out of the last 60 months, rather than five out of the last six years. (Change already made in Chapter 20 in Regulatory Reform Project)

Degree program requirements.

- For marriage and family and substance abuse treatment licensure, the Board intends to amend the regulation to require that there be a core of the faculty trained in the applicable profession rather than an “identifiable” faculty in each profession.
- The sections will also be amended to acknowledge that an educational program credentialed by the applicable profession meets the Board’s requirement for the program specifications of this section. Chapter 20 will be amended to add back a previous recognition of CACREP and CORE approval.

Course work requirements.

- In marriage and family regulations, three course work topics will be added to the required courses for consistency with other counseling licenses.
- Add language deleted from the residency section specifying that the internship must include 20 hours of individual on-site supervision, and 20 hours of individual or group off-site supervision and that internship hours cannot begin until completion of 30 semester hours toward the graduate degree. Also, add language about licensure of clinical or faculty supervisor for the internship currently found in the residency section.
- Add language to allow an applicant whose internship did not meet all the requirements to make up a portion of those required hours in the residency.
- For marriage and family, add language to specify the acceptance of certain coursework taken in the process of obtaining licensure in another mental health profession.

Residency.

- Reduce the total number of hours in a supervised residency to account for the minimum of 600 hours in an internship which is a prerequisite for beginning a residency and is currently counted towards the total of 4,000 hours.
- Clarify that the residency must be spent in provision of clinical counseling services and that case management and recordkeeping are considered ancillary services and are limited to 1,000 of the 2,000 hours of client contact in a residency.
- Add a requirement that the residency be completed in no less than two years or more than four years. An applicant who needs more time in the residency may submit evidence of why he or she should be allowed to continue practicing under supervision.
- Amend the requirement for 200 hours of face-to-face supervision in a residency to include the use of real-time, visual contact technology.
- Consider deleting other professions over which the Board has no regulatory or disciplinary authority, including psychologists, social workers and physicians, as qualified to serve as supervisors for residents in counseling, marriage and family therapy or substance abuse treatment.

General examination requirements.

- Amend to require an applicant to pass the examination within two years rather than take the examination within two years (consistent with Social Work). Change is necessary to avoid licensure of applicant many years after completion of education and supervised experience.

- Delete requirements for additional education or training for applicants who fail the examination twice, as the Board has oversight for the deficiency of the applicant on the examination.
- Specify that applicants who are waiting to take or retake the examination must remain under supervision if they are going to continue practicing.

Renewal of licensure.

- Clarify that practice with a lapsed or expired license is prohibited.

Continuing competency activity criteria.

- Add local government agencies in the groups that can offer continuing education to include local community service boards and others and update the names of other organizations.

Late renewal; reinstatement.

- Specify that the hours of continuing competency activities or course required for reactivation or reinstatement must be obtained within the four years immediately preceding application in Virginia.

Standards of practice.

- Strengthen prohibition on dual relationships to add “romantic relationship” to “sexual intimacies.” Add “students” to the prohibition on relationship with a “supervisee.”

Grounds for disciplinary action.

- Add “registration” as a category that may be disciplined to include persons registered with the Board in a residency.
- Specify that commission of fraud or misrepresentation in the submission of supervisory forms is grounds for disciplinary action to address recent problems with supervision.
- Add a general provision that provides grounds for discipline for “performance of an act likely to deceive, defraud or harm the public.”

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also, please describe the process by which the agency has considered or will consider other alternatives for achieving the need in the most cost-effective manner.

There are no viable alternatives to amending regulations governing the licensure of professional counselors, marriage and family therapists, and substance abuse treatment practitioners.

Requirements for licensure and standards of practice are set forth in Chapters 20, 50 and 60, so there is no other action that would accomplish the essential purpose.

Public participation

Please indicate whether the agency is seeking comments on the intended regulatory action, including ideas to assist the agency in the development of the proposal 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 on this notice.

The agency is seeking comments on the intended regulatory action, including but not limited to 1) ideas to assist in the development of a proposal, 2) the costs and benefits of the alternatives stated in this background document or other alternatives and 3) 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 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 comments may do so via the Regulatory Townhall website, www.townhall.virginia.gov, or 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. 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 after publication of proposed regulations and notice of the hearing may be found on the Virginia Regulatory Town Hall website (www.townhall.virginia.gov) and can be found in the Calendar of Events section of the Virginia Register of Regulations. Both oral and written comments may be submitted at that time.

Participatory approach

Please indicate, to the extent known, if advisers (e.g., ad hoc advisory committees, regulatory advisory panels) will be involved in the development of the proposed regulation. Indicate that 1) the agency is not using the participatory approach in the development of the proposal because the agency has authorized proceeding without using the participatory approach; 2) the agency is using the participatory approach in the development of the proposal; or 3) the agency is inviting comment on whether to use the participatory approach to assist the agency in the development of a proposal.

The amendments to regulation will be developed by the Regulatory Committee of the Board. All meetings are noticed in advance and open to the public for participation in the process.

On October 1, 2010, the Board convened a summit of representatives of educational institutions in Virginia who offer counseling programs. The summit provided an opportunity to discuss

issues relating to education and supervised experience and was useful in conducting the periodic review and developing recommendations.

The Regulatory Committee subsequently met on six occasions (12/10/10; 2/17/11; 5/5/11; 4/2/12; 5/17/13; and 5/8/14) to complete the comprehensive review and recommend changes based on current needs for protection of the public.

Family impact

Assess the potential impact of the proposed 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.

The institution of the family and family stability may be strengthened by the availability of licensed professionals who have the education and skills necessary to safely and effective counsel individuals and families.

Periodic review

*Per Executive Order 14 (2010), each existing regulation shall be reviewed **at least once every four years**.*

The Virginia Board of Counseling noticed the public that it is conducting a periodic review of its current regulations governing licensed professional counselors, marriage and family therapists and licensed substance abuse professionals and was requesting comment on the following current regulations:

<u>18 VAC 115-20</u>	Regulations Governing the Practice of Professional Counseling
<u>18 VAC 115-50</u>	Regulations Governing the Practice of Marriage and Family Therapy
<u>18 VAC 115-60</u>	Regulations Governing the Licensure of Substance Abuse Treatment Practitioners

Comment was requested from May 9, 2011 to June 8, 2011; there was no comment received.

Small business impact review

*Pursuant to § 2.2-4007.1 E and F each existing regulation shall be reviewed **at least once every five years** to ensure that it minimizes the economic impact on small businesses.*

If this NOIRA will include a review of the entire regulation for small business impact, please include, pursuant to § 2.2-4007.1 E and F, a discussion of the agency's consideration of: (1) the continued need for the regulation; (2) the complexity of the regulation; (3) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (4) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, include a discussion of the agency's determination whether the regulation should be amended or repealed, consistent with the stated objectives of applicable law, to minimize the economic impact of regulations on small businesses.

- 1) The Board has determined a continued need for the regulation, consistent with its licensing responsibility and with the powers granted in § [54.1-2400](#). Additionally, § 54.1-3505 grants the Board the following specific power and duty 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) Recommendations of the Committee conducting the periodic review include changes to make the regulation more consistent and clearer for applicants and licensees. By incorporating guidance now found in guidance documents, the Board can make regulation more specific and less cumbersome.
- 3) There is no overlap with federal or state law or regulation; the Virginia Board has sole authority to regulate the profession.
- 4) Regulations found in Chapter 20 were last reviewed in 2006 with final amendments becoming effective in 2008. Chapters 50 and 60 were reviewed in 2001, but the stage was withdrawn prior to completion of regulatory action. As these counseling professions have evolved, there is a need to amend regulations consistent with the current duties and responsibilities of licensees diagnosing and treating clients with mental health or substance abuse issues. Regulations are to be amended for consistency with current practice.
- 5) Amendments to regulation may avoid the unintended consequence now experienced by some applicants who expend time and money obtaining coursework and supervised experience that does not qualify them for a license.