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## Final Regulation Agency Background Document

<b>Agency name</b>	Board of Counseling, Department of Health Professions
<b>Virginia Administrative Code (VAC) citation(s)</b>	18VAC115-20-10 et seq. 18VAC115-50-10 et seq. 18VAC115-60-10 et seq.
<b>Regulation title(s)</b>	Regulations Governing the Practice of Professional Counseling Regulations Governing the Practice of Marriage and Family Therapy Regulations Governing the Licensure of Substance Abuse Treatment Practitioners
<b>Action title</b>	Periodic review
<b>Date this document prepared</b>	2/22/16

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 of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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.*

Amendments will clarify requirements for applicants and students to better understand the regulatory criteria for licensure. Less restrictive requirements include: 1) deletion of requirement for a transcript in applying for licensure if one was already submitted for approval of a residency; 2) reduction in the clinical practice required for licensure by endorsement (24 months in past 60

months versus five of the past six years) if the applicant does not meet equivalent education and experience requirements; 3) allowance for use of real-time visual technology to be used to meet requirement for face-to-face supervision; 4) deletion of specific requirements for an internship; 5) inclusion of local governmental agencies, such as community service boards, as continuing education providers.

Further specification of the prohibition against sexual relationships between licensees and clients, supervisees or students will provide greater protection for the public in seeking or receiving clinical counseling services. Likewise, establishing fraud, deceit or harm to the public as grounds for possible disciplinary actions will enable the Board to deal effectively with 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.*

LPC = licensed professional counselor  
 MFT = marriage and family therapist  
 LSATP = substance abuse treatment practitioner

### Statement of final agency action

*Please provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.*

On February 12, 2016, the Board of Counseling amended Regulations Governing the Practice of Professional Counseling, Regulations Governing the Practice of Marriage and Family Therapy, and Regulations Governing the Licensure of Substance Abuse Treatment Practitioners.

### 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. ...*

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.*

### 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.*

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.

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 proposed. 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. 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. Failure to provide competent mental health services can have a detrimental effect on the individual being served and his or her family and community.

## Substance

*Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both.*

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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.”

### 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.
- Clarify that passage of the licensing examination is required.
- Require a report from NPDB.

### Licensure by endorsement.

- Add a requirement for a current report from NPDB 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.

- 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.
- For marriage and family and substance abuse treatment practice, 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 18 months 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.
- Delete 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.”

## 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) There are no disadvantages to the public. A clearer standard on sexual relationships will provide greater protection for clients who are vulnerable to abuse in the practitioner/client relationship or the supervisor/supervisee or student relationship. Some applicants for licensure

by endorsement who do not qualify under the current practice requirement will be eligible under the proposed regulations, which could result in a very modest increase in the numbers of licensees available to provide mental health services in the Commonwealth.

- 2) There are no particular advantages or disadvantages to the agency or the Commonwealth.
- 3) There are no other pertinent matters of interest.

**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.*

There are no applicable federal requirements.

**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.

**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.*

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 effectively counsel individuals and families.

**Changes made since the proposed stage**

*Please list all changes that made to the text of the proposed regulation and the rationale for the changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. \*Please put an asterisk next to any substantive changes.*



Chapter 20

Section number	Requirement at proposed stage	What has changed	Rationale for change
51 subsection A	Internship hours could not be earned until after completion of 30 semester hours in a graduate program	Will allow internship hours during the graduate program, but only those hours earned after completion of 30 graduate semester hours can be counted towards the residency.	<b>Response to comment.</b> Many programs have more than 600 hours because practicum or internship hours are earned during the course of a graduate program. The revised regulation would allow that, but would make it clear that only those hours earned after 30 semester hours could be counted towards the residency.
52 subsection B	Residency must be completed in no less than 18 months or more than 4 years	The minimum time for completion of a residency changed from 18 to 21 months.	<b>Recommendation of the Secretary</b> in calculation of time required to complete 3,400 hours of supervised practice.
52 subsection C	Deletion of professions other than LPC or MFT that are allowed to provide supervision to residents	Will allow approved supervisors who hold other licenses to continue for one year after the effective date of this regulation.	<b>Response to comment.</b> Will give residents an opportunity to complete hours under an approved supervisor or time to find a qualified supervisor under the revised regulation.

Chapter 50 – same changes as above in sections 55 and 60

Chapter 60 – same changes as above in sections 70 and 80

**Public comment**

*Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate. Please distinguish between comments received on Town Hall versus those made in a public hearing or submitted directly to the agency or board.*

Commenter	Comment	Agency response
Lisa Iervolino Nat'l Counseling Group	Requirement that limits supervision of LPC residents to LPC's and MFT's will require people to change supervisors currently in place. Requests a one-year notice for residents to complete supervision or find a new supervisor.	The Board amended all 3 chapters to allow licensees who are currently approved to provide supervision to continue to do so for one year from the effective date of the regulation.
Eric McCollum	Concern about the requirement that	The Board concurred with the comment and

Va. Tech MFT Program	internships begin after completion of 30 semester hours. Internship hours should be allowed to begin prior to that, but recommends that only those internship hours earned after completion of 30 semester hours be allowed to count towards the residency.	amended all 3 chapters accordingly.
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**All changes made in this regulatory action**

*Please list all changes that are being proposed and the consequences of the proposed changes. Describe new provisions and/or all changes to existing sections. Explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation*

**Chapter 20: Regulations Governing the Practice of Professional Counseling**

<b>Current section number</b>	<b>Current requirement</b>	<b>Proposed change, intent, rationale, and likely impact of proposed requirements</b>
20	Definitions for words and terms used in the chapter	<p>Definitions for “appraisal activities” and “counseling treatment interventions” are deleted because they are no longer used in the chapter.</p> <p>In subsection B, definitions for “CACREP” and “CORE” are added to give the full name for the acronyms used in regulation. The definition of “supervision” is amended to clarify that it includes consultation, guidance and instruction “that is specific to the clinical counseling services being performed.”</p> <p><i>The amended definition is necessary to help address deficiencies that have been noticed in some residencies. The licensee should be providing a resident oversight and instruction that is specific to clinical counseling, rather than a general or symbolic form of supervision.</i></p>
40	Sets out the requirements for licensure by examination	<p>While section 70 states that every applicant must pass the licensing examination, it was not specified in the list of requirements for licensure by examination. Additionally, the Board has added a requirement for a current report from the NPDB.</p> <p><i>Some applicants for licensure by examination already have another license, so it is important for the Board to have a disciplinary and malpractice history to determine whether there is cause for denial. Currently, applicants are supposed to self-disclose that information but that is not always done.</i></p>
45	Sets out the requirements for licensure by endorsement	<p>The Board has added a requirement for a current report from the NPDB.</p> <p><i>Same as above.</i></p>
49	Sets out the degree program requirements	<p>Subsection B is added to specify that programs that are approved by CACREP or CORE are recognized as meeting the requirements of subsection A of this section.</p> <p><i>In the process of amending regulations for Regulatory Reform, the Board took out subsection B referencing accreditation by CACREP or CORE because the wording</i></p>

		<p><i>implied that an applicant who graduated from one of those programs had met all the coursework requirements of section 51. The intent is to identify CACREP or CORE accreditation as meeting the program requirements of this section.</i></p>
51	Sets out the coursework required to qualify for licensure	<p>An amendment to #13 in subsection A specifies that an internship cannot begin until at least 30 hours of the 60-hour graduate coursework has been completed.  <i>While that has informally been the Board’s position and is the standard for accredited programs, it has not been specified in regulation. Few, if any, educational programs would allow an internship without completion of a basic core of courses.</i>  <b>Change in final – does not restrict internship hours but will only count those earned after completion of 30 semester hours to count towards the residency.</b></p>
52	Establishes the requirements for a residency in counseling	<p>Subsection B is amended to:            1) Allow up to 20 hours of the supervision received during an internship to be counted towards to the 200 hours of face-to-face supervision, if it was provided by a licensed professional counselor.  <i>Since most residents pay for supervision by the hour, a reduction in 20 hours would result in less cost for obtaining a license. The Board believes the supervision in an internship, provided it was by an LPC, is adequate and perhaps even more “hands-on” than supervision in a residency.</i>            2) Add #7 to specific a time frame within which a residency of 3,400 hours must be completed. It must be not less than 21 months or more than four years. There will be a grace period of four years from the effective date of the regulation, so no one will be disadvantaged by a new time requirement. Persons who are unable to complete the residency in four years may submit evidence showing why they should be allowed to continue.  <i>Currently, there is no time limit on a residency, so the Board has file drawers of applicants who were approved for a residency but never licensed. Without a time frame, the Board cannot purge those old files. Most importantly, it would not be in the public’s best interest for such a person to attempt to complete a residency and become licensed after a long gap of time between their education and supervised experience. Realizing that there may be circumstances that would necessitate a longer time for completion, the regulation would allow an extension for good cause.</i></p> <p>A new #11 is added to specify that the Board can accept residency hours approved by another licensing board in another jurisdiction. <i>The Credentials Committee typically does accept such hours, but the regulation does not specifically provide for acceptance.</i></p> <p>Subsection C is amended to eliminate the practitioners who are not licensed by the Board of Counseling as supervisors</p>

		<p>for residents, so an LPC or an MFT can supervise a resident. Currently, at least 100 of the 200 hours must be <i>When professional counseling was a relatively new profession, it was deemed necessary to include other professions as potential supervisors. However, there are now almost 4,800 LPC's and MFT's with current, active licensure located throughout the Commonwealth. Additionally, regulations now provide that face-to-face supervision may include the use of secured technology if it maintains client confidentiality and provides real-time visual contact.</i></p> <p><i>Occasionally, the Board has evidence of improper supervision or even falsification of supervisory reports. It is also concerned that a supervisor with a different license may not be as qualified to oversee and guide a resident in the profession of counseling. The Board of Social Work requires supervision to be provided by a licensed clinical social work; the Board of Psychology requires supervision to be provided by a psychologist licensed in the category in which the resident is practicing.</i></p> <p><b>Change in final – licensees currently serving as a supervisor will be allowed to continue doing so for one years after the effective date of this regulation.</b></p>
70	Sets out the requirements for examinations	<p>Currently, subsection C requires that a candidate take the licensure examination within two years from the date of initial approval. The amendment would require that the examination be passed within 2 years. Candidates who cannot pass within 2 years would be allowed to re-apply and be given an additional 2 years.</p> <p><i>While the examination is given monthly, candidates who fail must wait 3 months to retake. Therefore, an applicant would have to the opportunity to take the examination 8 times in a two-year period. Failure to pass the examination after multiple attempts would be a strong indicator that a person is not competent or sufficiently knowledgeable to practice as a professional counselor. Presently, an applicant who has taken but failed the examination can continue multiple attempts for an indefinite period of time or can wait a decade (with no additional course work or supervised practice) and sit for the licensing examination again. The Board cannot purge those files because there is no time limit for passage of the exam.</i></p>
130	Sets out the standards of practice	<p>The Board has added persons who are registered as residents to those individuals who must practice according to the standards set out in section 130.</p>

Chapter 50: Regulations Governing the Practice of Marriage and Family Therapy

Current section number	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
10	Sets out definitions for words and terms used in the	The acronym for CACREP is amended for consistency with the current name of the accrediting body.

	chapter.	<p>The terms being added are “ancillary counseling services,” “clinical counseling services” and “face-to-face.” All are terms are currently used in regulation; the meanings are not changing. Definitions are added for greater clarity and ease of reading and complying with the regulations in which the terms are used.</p> <p>The definition for the word “internship” is amended for consistency with the way it is used in academic settings. There is no implication for the way it is used or applied in regulation.</p> <p>The definition of “residency” is amended to clarify that the residency begins after completion of graduate education, not just after the internship. It is not possible to begin a residency until educational requirements are met, so the current definition could be misleading.</p>
20	Sets the fees charged by the Board	Subsection A is amended to delete renewal fees in 2010 for a one-time fee reduction no longer in effect.
30	Establishes prerequisites for licensure by examination	<p>While section 70 states that every applicant must pass the licensing examination, it was not specified in the list of requirements for licensure by examination.</p> <p>There is a less burdensome requirement for submission of a transcript. If an applicant has already submitted a transcript to qualify for approval of a residency, he would not be required to include the transcript as part of his licensure application. <i>The change will result in a cost-avoidance for applicants and facilitate the application process which is sometimes delayed while the Board waits for an educational program to send the transcript.</i></p> <p>Another amendment will specify that “verification” of any mental or health license in another jurisdiction is required. <i>The word “verification” is used rather than “documentation” because some states prefer to verify electronically rather than send written documentation, for which the charge the applicant. The specification of a “mental health or health” license or certificate narrows the requirement to only those professional licenses akin to the license which the applicant is seeking in Virginia.</i></p> <p>Additionally, the Board has added a requirement for a current report from the NPDB. <i>Some applicants for licensure by examination already have another license, so it is important for the Board to have a disciplinary and malpractice history to determine whether there is cause for denial. Currently, applicants are supposed to self-disclose that information but that is not always done.</i></p> <p>The amendment adding a provision that the applicant have no unresolved disciplinary action is consistent with the current process. <i>Applicants are asked about disciplinary</i></p>

		<p><i>actions in other jurisdiction, and states are asked to verify the status of a license. If there is <u>unresolved</u> action, the applicant would not be approved pending the outcome of the case in the other state. If a disciplinary action has taken place in the past, the Board will consider the matter on a case-by-case basis. Section 140 of its regulations establishes grounds for denial, so the Board has authority to deny or issue the license based on the facts presented.</i></p>
40	Sets out the requirements for licensure by endorsement	<p>In subsection A, the Board has added the same requirements as licensure by examination – verification of a “mental health or health” license, passage of a MFT licensure examination, and a current report from the Data Bank.  <i>Same rationale as above.</i>                  There is also a requirement that the applicant attest to having read and understood the regulations and laws governing practice.  <i>There is a similar requirement for other professions to ensure that a licensee coming from another state understands the legal requirements for practice in Virginia.</i></p> <p>An amendment in subsection B significantly reduces the regulatory burden by allowing an applicant who does <u>not</u> have the educational and experience credentials equivalent to those required for Virginia licensure to provide evidence of clinical practice for 24 of the last 60 months preceding his application. <i>The current requirement is five out of the last six years of clinical practice. Clinical practice is defined as direct clinical services or supervision of those services. Clinical practice in another jurisdiction is currently required for this alternative pathway to licensure, but the amendment will make it possible for some applicants who have not practices for five of the last six years to become licensed in Virginia.</i></p>
50	Sets out the degree program requirements	<p>Subsection A is amended to delete “a discipline related to the practice of marriage and family therapy.”  <i>When MFT regulations were first promulgated, the Board accepted degree programs from a related discipline, in addition to MFT degree programs. Now that the discipline is more recognized in educational institutions, there are more MFT programs available. The acceptance of a “related discipline” has been problematic and open to interpretation, so the Board has decided that the regulation should be more specific.</i>                  Subsection B is amended to specify that programs that are approved by CACREP or CORE are recognized as meeting the requirements of subsection A of this section.  <i>The current wording implies that an applicant who graduated from one of those programs has met all the coursework requirements of section 55. The intent is to identify CACREP or CORE accreditation as meeting the program requirements of this section.</i></p>
55	Sets out the coursework requirements	<p>The amendments to subsection A are clarifying for a clearer understanding of the current requirement. An applicant must “successfully” complete the “coursework” in the subject</p>

		<p>matter listed. The new coursework in ## 4 - 6 does not increase the number of hours but adds subject areas that were included in the counseling degree but missing in the MFT degree. <i>Since this degree prepares a person for a counseling-related profession, there should be consistent coursework.</i></p> <p>The supervised internship must be at least 600 hours, but may be more than that. Internship hours in excess of 600 hours may be counted towards the residency requirement. An amendment to #10 in subsection A specifies that an internship cannot begin until at least 30 hours of the 60-hour graduate coursework has been completed.</p> <p><i>While that has informally been the Board's position and is the standard for accredited programs, it has not been specified in regulation. Few, if any, educational programs would allow an internship without completion of a basic core of courses.</i></p> <p><b>Change in final – does not restrict internship hours but will only count those earned after completion of 30 semester hours to count towards the residency.</b></p> <p>Subsection B is amended to allow the Board to accept graduate study leading to another mental health license as meeting the coursework requirements for an MFT license, provided the applicant can show the required hours in marriage and family studies and marriage and family therapy. <i>The amendment will facilitate applicant qualification for licensure.</i></p>
60	Sets out the residency requirements	<p>In subsection A, there are edits for clarification and deletion of a reference to an expired deadline for registration of supervision in exempt settings.</p> <p>In subsection B, amendments reduce the hourly requirement for a residency from 4,000 to 3,400 to provide for inclusion of the internship within the graduate degree program. Accordingly, specific requirements for an internship relating to on-site and off-site supervision, completion of graduate hours prior to beginning an internship and licensure of supervisors are eliminated in the regulatory proposal. The requirement for at least two years of supervised experience is deleted and replaced with new provision in #9. <i>Since the completion of an internship is already required within a graduate education program, the Board will rely on the program to oversee the supervision and quality of the internship experience. Internships that exceed the minimum requirement of 600 hours (generally 900 hour-internships in certain programs), may be counted towards the residency for up to an additional 300 hours.</i></p> <p>For the purpose of meeting the 200 hours of face-to-face supervision, an amendment will allow the use of secured technology that maintains client confidentiality and provides real-time, visual contact. <i>The use of technology will benefit residents who find it difficult to meet face-to-face with supervisors; it will also likely expand the available pool of supervisors. The provision for at least ½ of the 200 hours of</i></p>

		<p><i>supervision to be rendered by an MFT is currently in subsection C, so it is not a new requirement.</i></p> <p>An amendment will allow up to 20 hours of the supervision received during an internship to be counted towards to the 200 hours of face-to-face supervision, if it was provided by a licensed professional counselor or a marriage and family therapist.</p> <p><i>Since most residents pay for supervision by the hour, a reduction in 20 hours would result in less cost for obtaining a license. The Board believes the supervision in an internship, provided it was by an LPC, is adequate and perhaps even more “hands-on” than supervision in a residency.</i></p> <p><b>Change in final – licensees currently serving as a supervisor will be allowed to continue doing so for one year after the effective date of this regulation.</b></p> <p>In #6, the new provision allows the Board to consider special requests for supervision if regulations create an undue burden in regard to geography or disability. <i>The “hardship” provision is identical to a regulation in Chapter 20 for licensed professional counseling, so there should be consistency and fairness for all licensed professions under the Board.</i></p> <p>The amendment to #7 clarifies that the resident may not directly bill for his services; the prohibition on solicitation of clients was eliminated because it is difficult to discern and enforce.</p> <p>An amendment to #9 sets a time frame within which a residency of 3,400 hours must be completed. It must be not less than 21 months or more than four years. There will be a grace period of four years from the effective date of the regulation, so no one will be disadvantaged by a new time requirement. Persons who are unable to complete the residency in four years may submit evidence showing why they should be allowed to continue.</p> <p><i>Currently, MFT regulations specific that the residency must be at least 2 years and no more than 5 years. For consistency, regulations for all licensed professions are being amended. Realizing that there may be circumstances that would necessitate a longer time for completion, the regulation would allow an extension for good cause.</i></p> <p>A new #10 is added to specify that the Board can accept residency hours approved by another licensing board in another jurisdiction. <i>The Credentials Committee typically does accept such hours, but the regulation does not specifically provide for acceptance.</i></p> <p>Subsection C is amended to eliminate the practitioners who are not licensed by the Board of Counseling as supervisors for residents, so an LPC or an MFT can supervise a</p>
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		<p>resident. Currently, at least 100 of the 200 hours must be provided by an MFT.</p> <p><i>When professional counseling was a relatively new profession, it was deemed necessary to include other professions as potential supervisors. However, there are now almost 4,800 LPC's and MFT's with current, active licensure located throughout the Commonwealth.</i></p> <p><i>Additionally, regulations now provide that face-to-face supervision may include the use of secured technology if it maintains client confidentiality and provides real-time visual contact.</i></p> <p><i>Occasionally, the Board has evidence of improper supervision or even falsification of supervisory reports. It is also concerned that a supervisor with a different license may not be as qualified to oversee and guide a resident in the profession of counseling. The Board of Social Work requires supervision to be provided by a licensed clinical social work; the Board of Psychology requires supervision to be provided by a psychologist licensed in the category in which the resident is practicing.</i></p> <p>In subsection C, a provision that expired in 2010 is deleted. In subsection D, an amendment references the current definition of supervision.</p>
70	Establishes the general examination requirements	<p>In § 54.1-3506, the Code authorizes the Board to license a professional counselor as an MFT without examination. That allowance is specified in regulation in subsection A.</p> <p>Currently, subsection C requires that a candidate take the licensure examination within two years from the date of initial approval. The amendment would require that the examination be passed within 2 years. Candidates who cannot pass within 2 years would be allowed to re-apply and be given an additional 2 years.</p> <p><i>While the examination is given monthly, candidates who fail must wait 3 months to retake. Therefore, an applicant would have to the opportunity to take the examination 8 times in a two-year period. Failure to pass the examination after multiple attempts would be a strong indicator that a person is not competent or sufficiently knowledgeable to practice as a professional counselor. Presently, an applicant who has taken but failed the examination can continue multiple attempts for an indefinite period of time or can wait a decade (with no additional course work or supervised practice) and sit for the licensing examination again. The Board cannot purge those files because there is no time limit for passage of the exam.</i></p> <p>The amendment in subsection D addresses a question raised by an applicant who had completed his residency hours but failed the licensure examination. <i>Such a person may either discontinue counseling-related activities or continue to work under an approved supervisor. The requirement for documentation of an additional 45 hours of education or training which address the areas of deficiency is eliminated. The Board does not receive exam results</i></p>

		<i>showing areas of deficiency, so acceptable of additional hours is problematic and has not been shown to improve the passage rate for repeat exam takers.</i>
90	Sets out requirements for annual renewal of licensure	The addition of subsection E clarifies in regulation the legal requirement for a person to have a current active license in order to practice his profession. <i>To continue practice on an expired license may constitute grounds for disciplinary action. If there is a short gap between the expiration date and renewal, the Board may consider use of a confidential consent agreement or an advisory letter – neither of which is considered disciplinary action. Each situation is evaluated on the facts of the case.</i>
95	Sets out the continued competency requirement for renewal	Deletes a date that is no longer necessary.
96	Sets out the criteria for continued competency activities	Subsection B is amended to: 1) Allow acceptance of CE offerings from local governmental agencies in addition to state and federal; and 2) Change the name of an approved organization consistent with its current identity.
100	Sets out the requirements for late renewal and reinstatement of licensure	An amendment to subsection B adds a reinstatement requirement for verification of any mental health license the applicant holds or has held in another jurisdiction. <i>The information is currently included on a reinstatement application, so it is already required and necessary to ensure that there are no outstanding disciplinary problems in another state that may constitute grounds for denial.</i> There is also an amendment to the provision for evidence of 80 hours of continuing competency activities to require those hours to be obtained within the four years immediately preceding application for reinstatement. <i>The 80 hours within 4 years is equivalent to the requirement for maintenance of active licensure.</i>  The amendment to subsection C for reactivation is needed for consistency with reinstatement. <i>In both situations, the Board has an obligation to ensure that the person who has not held an active licensure for more than one year has the continued ability to resume clinical practice.</i>
110	Sets out the standards of practice	The Board has added persons who are registered as residents to those individuals who must practice according to the standards set out in section 110.  Changes in subsection D were recommended by Board counsel to clarify that the prohibition on a sexual relationship with a client or former client includes a romantic relationship that does not involve sexual intimacy. <i>Occasionally, respondents will attempt to argue that the relationship did not result in sexual intimacy and therefore is not prohibited. The Board’s interpretation of “sexual relationship” is broad enough to include a romantic involvement because it seriously jeopardizes the counselor/client relationship. The standards of the private professional association are more stringent than those of the Board, calling for a lifetime prohibition on any sexual or romantic relationship with a</i>

		<p><i>former client.</i></p> <p>The subsection has also been amended to clarify that the prohibition against inappropriate relationships includes students. <i>Currently, the Board would interpret a student as being “supervised” by a profession in his didactic coursework and/or internship experience. The amendment makes that interpretation more clear. The amendments also make MFT regulations consist with professional counseling regulations in Chapter 20.</i></p>
120	Sets out the grounds for disciplinary action by the Board	<p>There are two amendments recommended to ensure that the Board has appropriate authority to take disciplinary action. The changes will: 1) clarify that procurement of a license by fraud or misrepresentation includes the submission of the application or supervisory forms necessary for issuance of a license; and 2) add as grounds the performance of an act likely to deceive, defraud or harm the public. <i>The latter change is consistent with language for some other professions (Medicine – § 54.1-2915) and is necessary to be able to take disciplinary action for an act which is clearly fraudulent or harmful but for which there are no specific grounds to cite.</i></p>

Chapter 60: Regulations Governing the Licensure of Substance Abuse Professionals

<b>Current section number</b>	<b>Current requirement</b>	<b>Proposed change, intent, rationale, and likely impact of proposed requirements</b>
10	Sets out definitions for words and terms used in the chapter.	<p>The acronym for CACREP is amended for consistency with the current name of the accrediting body.</p> <p>The terms being added are “ancillary counseling services,” “clinical counseling services” and “face-to-face.” All are terms are currently used in regulation; the meanings are not changing. Definitions are added for greater clarity and ease of reading and complying with the regulations in which the terms are used.</p> <p>The definition for the word “internship” is amended for consistency with the way it is used in academic settings. There is no implication for the way it is used or applied in regulation.</p> <p>The definition of “residency” is amended to clarify that the residency begins after completion of graduate education, not just after the internship. It is not possible to begin a residency until educational requirements are met, so the current definition could be misleading.</p>
20	Sets the fees charged by the Board	Subsection A is amended to delete renewal fees in 2010 for a one-time fee reduction no longer in effect.
40	Establishes prerequisites for licensure by examination	<p>While section 90 states that every applicant must pass the licensing examination, it was not specified in the list of requirements for licensure by examination.</p> <p>There is a less burdensome requirement for submission of a</p>

		<p>transcript. If an applicant has already submitted a transcript to qualify for approval of a residency, he would not be required to include the transcript as part of his licensure application. <i>The change will result in a cost-avoidance for applicants and facilitate the application process which is sometimes delayed while the Board waits for an educational program to send the transcript.</i></p> <p>Another amendment will specify that “verification” of any mental or health license in another jurisdiction is required. <i>The word “verification” is used rather than “documentation” because some states prefer to verify electronically rather than send written documentation, for which the charge the applicant. The specification of a “mental health or health” license or certificate narrows the requirement to only those professional licenses akin to the license which the applicant is seeking in Virginia.</i></p> <p>Additionally, the Board has added a requirement for a current report from the NPDB. <i>Some applicants for licensure by examination already have another license, so it is important for the Board to have a disciplinary and malpractice history to determine whether there is cause for denial. Currently, applicants are supposed to self-disclose that information but that is not always done.</i></p> <p>The amendment adding a provision that the applicant have no unresolved disciplinary action is consistent with the current process. <i>Applicants are asked about disciplinary actions in other jurisdiction, and states are asked to verify the status of a license. If there is unresolved action, the applicant would not be approved pending the outcome of the case in the other state. If a disciplinary action has taken place in the past, the Board will consider the matter on a case-by-case basis. Section 140 of its regulations establishes grounds for denial, so the Board has authority to deny or issue the license based on the facts presented.</i></p>
50	Sets out the requirements for licensure by endorsement	<p>In subsection A, the Board has added the same requirements as licensure by examination – verification of a “mental health or health” license, passage of a substance abuse licensure examination, and a current report from the Data Bank. <i>Same rationale as above.</i></p> <p>In § 54.1-3506, the Code authorizes the Board to license a professional counselor as a substance abuse treatment practitioner without examination. That allowance is specified in regulation in subsection A.</p> <p>An amendment in subdivision c of subsection B significantly reduces the regulatory burden by allowing an applicant who does <u>not</u> have the educational and experience credentials equivalent to those required for Virginia licensure to provide evidence of clinical practice for 24 of the last 60 months</p>

		preceding his application. <i>The current requirement is five out of the last six years of clinical practice. Clinical practice is defined as direct clinical services or supervision of those services. Clinical practice in another jurisdiction is currently required for this alternative pathway to licensure, but the amendment will make it possible for some applicants who have not practices for five of the last six years to become licensed in Virginia.</i>
55	Sets out the requirements for a time-limited waiver of certain licensure requirements	The waiver was limited to individuals who applied prior to February 26, 2004, so the provisions can now be deleted.
60	Sets out the degree program requirements	Subsection B is amended to specify that programs that are approved by CACREP or CORE are recognized as meeting the requirements of subsection A of this section. <i>The current wording implies that an applicant who graduated from one of those programs has met all the coursework requirements of section 70. The intent is to identify CACREP accreditation as meeting the program requirements of this section.</i>
70	Sets out the coursework requirements	The amendments to subsection A are clarifying for a clearer understanding of the current requirement. An applicant must “successfully” complete the “coursework” in the subject matter listed.  The supervised internship must be at least 600 hours, but may be more than that. Internship hours in excess of 600 hours may be counted towards the residency requirement. An amendment to subsection D specifies that an internship cannot begin until at least 30 hours of the 60-hour graduate coursework has been completed. <i>While that has informally been the Board’s position and is the standard for accredited programs, it has not been specified in regulation. Few, if any, educational programs would allow an internship without completion of a basic core of courses.</i> <b>Change in final – does not restrict internship hours but will only count those earned after completion of 30 semester hours to count towards the residency.</b> Subsection F is amended to allow the Board to accept graduate study leading to another mental health license as meeting the coursework requirements for an LSATP license, provided the applicant can show the required hours in marriage and substance abuse specified in subsection C. <i>The amendment will facilitate applicant qualification for licensure.</i>
80	Sets out the residency requirements	In subsections A and B, there are edits for clarification and deletion of a reference to an expired deadline for registration of supervision in exempt settings.  In subsection C, amendments reduce the hourly requirement for a residency from 4,000 to 3,400 to provide for inclusion of the internship within the graduate degree program. Accordingly, specific requirements for an internship relating to on-site and off-site supervision,

		<p>completion of graduate hours prior to beginning an internship and licensure of supervisors are eliminated in the regulatory proposal. <i>Since the completion of an internship is already required within a graduate education program, the Board will rely on the program to oversee the supervision and quality of the internship experience. Internships that exceed the minimum requirement of 600 hours (generally 900 hour-internships in certain programs), may be counted towards the residency for up to an additional 300 hours.</i></p> <p>For the purpose of meeting the 200 hours of face-to-face supervision, an amendment will allow the use of secured technology that maintains client confidentiality and provides real-time, visual contact. <i>The use of technology will benefit residents who find it difficult to meet face-to-face with supervisors; it will also likely expand the available pool of supervisors.</i></p> <p>An amendment will allow up to 20 hours of the supervision received during an internship to be counted towards the 200 hours of face-to-face supervision, if it was provided by a licensed professional counselor. <i>Since most residents pay for supervision by the hour, a reduction in 20 hours would result in less cost for obtaining a license. The Board believes the supervision in an internship, provided it was by an LPC, is adequate and perhaps even more "hands-on" than supervision in a residency.</i></p> <p>An amendment to #5 in subsection C sets a time frame within which a residency of 3,400 hours must be completed. It must be not less than 21 months or more than four years. There will be a grace period of four years from the effective date of the regulation, so no one will be disadvantaged by a new time requirement. Persons who are unable to complete the residency in four years may submit evidence showing why they should be allowed to continue. <i>For consistency, regulations for all licensed professions are being amended. Realizing that there may be circumstances that would necessitate a longer time for completion, the regulation would allow an extension for good cause.</i></p> <p>A new #9 is added to specify that the Board can accept residency hours approved by another licensing board in another jurisdiction. <i>The Credentials Committee typically does accept such hours, but the regulation does not specifically provide for acceptance.</i></p> <p>Subsection D is amended to eliminate the practitioners who are not licensed by the Board of Counseling as supervisors for residents, so an LPC or an LSATP can supervise a resident. <i>When professional counseling was a relatively new profession, it was deemed necessary to include other professions as potential supervisors. However, there are</i></p>
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		<p>now almost 4,100 LPC's and LSATP's with current, active licensure located throughout the Commonwealth. Additionally, regulations now provide that face-to-face supervision may include the use of secured technology if it maintains client confidentiality and provides real-time visual contact.</p> <p>Occasionally, the Board has evidence of improper supervision or even falsification of supervisory reports. It is also concerned that a supervisor with a different license may not be as qualified to oversee and guide a resident in the profession of counseling. The Board of Social Work requires supervision to be provided by a licensed clinical social work; the Board of Psychology requires supervision to be provided by a psychologist licensed in the category in which the resident is practicing.</p> <p><b>Change in final – licensees currently serving as a supervisor will be allowed to continue doing so for one year after the effective date of this regulation.</b></p> <p>In subsection F, a provision that has expired is deleted.</p>
90	Establishes the general examination requirements	<p>In § 54.1-3506, the Code authorizes the Board to license a professional counselor as an LSATP without examination. That allowance is specified in regulation in subsection C.</p> <p>Currently, subsection D requires that a candidate take the licensure examination within two years from the date of initial approval. The amendment would require that the examination be passed within 2 years. Candidates who cannot pass within 2 years would be allowed to re-apply and be given an additional 2 years.</p> <p><i>While the examination is given monthly, candidates who fail must wait 3 months to retake. Therefore, an applicant would have to the opportunity to take the examination 8 times in a two-year period. Failure to pass the examination after multiple attempts would be a strong indicator that a person is not competent or sufficiently knowledgeable to practice as a substance abuse treatment practitioner. Presently, an applicant who has taken but failed the examination can continue multiple attempts for an indefinite period of time or can wait a decade (with no additional course work or supervised practice) and sit for the licensing examination again. The Board cannot purge those files because there is no time limit for passage of the exam.</i></p> <p>The amendment in subsection F addresses a question raised by an applicant who had completed his residency hours but failed the licensure examination. <i>Such a person may either discontinue counseling-related activities or continue to work under an approved supervisor. The requirement for documentation of an additional 45 hours of education or training which address the areas of deficiency is eliminated. The Board does not receive exam results showing areas of deficiency, so acceptable of additional hours is problematic and has not been shown to improve the passage rate for repeat exam takers.</i></p>

110	Sets out requirements for annual renewal of licensure	The addition of subsection E clarifies in regulation the legal requirement for a person to have a current active license in order to practice his profession. <i>To continue practice on an expired license may constitute grounds for disciplinary action. If there is a short gap between the expiration date and renewal, the Board may consider use of a confidential consent agreement or an advisory letter – neither of which is considered disciplinary action. Each situation is evaluated on the facts of the case.</i>
115	Sets out the continued competency requirement for renewal	Deletes a date that is no longer necessary.
116	Sets out the criteria for continued competency activities	Subsection B is amended to: 1) Allow acceptance of CE offerings from local governmental agencies in addition to state and federal; and 2) Change the name of an approved organization consistent with its current identity.
120	Sets out the requirements for late renewal and reinstatement of licensure	An amendment to subsection B adds a reinstatement requirement for verification of any mental health license the applicant holds or has held in another jurisdiction. <i>The information is currently included on a reinstatement application, so it is already required and necessary to ensure that there are no outstanding disciplinary problems in another state that may constitute grounds for denial.</i> There is also an amendment to the provision for evidence of 80 hours of continuing competency activities to require those hours to be obtained within the four years immediately preceding application for reinstatement. <i>The 80 hours within 4 years is equivalent to the requirement for maintenance of active licensure.</i>  The amendment to subsection C for reactivation is needed for consistency with reinstatement. <i>In both situations, the Board has an obligation to ensure that the person who has not held an active licensure for more than one year has the continued ability to resume clinical practice.</i>
130	Sets out the standards of practice	The Board has added persons who are registered as residents to those individuals who must practice according to the standards set out in section 130.  Changes in subsection D were recommended by Board counsel to clarify that the prohibition on a sexual relationship with a client or former client includes a romantic relationship that does not involve sexual intimacy. <i>Occasionally, respondents will attempt to argue that the relationship did not result in sexual intimacy and therefore is not prohibited. The Board's interpretation of "sexual relationship" is broad enough to include a romantic involvement because it seriously jeopardizes the counselor/client relationship. The standards of the private professional association are more stringent than those of the Board, calling for a lifetime prohibition on any sexual or romantic relationship with a former client.</i>  The subsection has also been amended to clarify that the



		<p>prohibition against inappropriate relationships includes students. <i>Currently, the Board would interpret a student as being "supervised" by a profession in his didactic coursework and/or internship experience. The amendment makes that interpretation more clear. The amendments also make MFT regulations consist with professional counseling regulations in Chapter 20.</i></p>
140	<p>Sets out the grounds for disciplinary action by the Board</p>	<p>There are two amendments recommended to ensure that the Board has appropriate authority to take disciplinary action. The changes will: 1) clarify that procurement of a license by fraud or misrepresentation includes the submission of the application or supervisory forms necessary for issuance of a license; and 2) add as grounds the performance of an act likely to deceive, defraud or harm the public. <i>The latter change is consistent with language for some other professions (Medicine – § 54.1-2915) and is necessary to be able to take disciplinary action for an act which is clearly fraudulent or harmful but for which there are no specific grounds to cite.</i></p>