



## Virginia Department of Planning and Budget **Economic Impact Analysis**

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**18 VAC 115-20 Regulations Governing the Practice of Professional Counseling**  
**18 VAC 115-50 Regulations Governing the Practice of Marriage and Family Therapy**  
**18 VAC 115-60 Regulations Governing the Licensure of Substance Abuse Practitioners**  
**Department of Health Professions**  
**Town Hall Action/Stage: 5230 / 8872**  
April 15, 2020

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### **Summary of the Proposed Amendments to Regulation**

Pursuant to a periodic review,<sup>1</sup> the Board of Counseling (Board) proposes to: 1) expand pathways to licensure by endorsement, depending in part on whether the applicant's degree was from a program accredited by the Council for Accreditation of Counseling and Related Educational Programs (CACREP), 2) deem a degree from a CACREP-accredited program to meet the current coursework requirements, 3) remove a waiver of examination requirements from licensed professional counselors who wish to obtain specialty licenses, 4) add a \$75 fee for reinstating a resident license, 5) require maintenance of records relating to supervision for a period of five years, 6) amend the definition of "face-to-face" to include communications through visual, interactive, real-time technology, 7) add an allowance for up to two hours of continuing education credits, and 8) introduce additional standards of practice and grounds for disciplinary action.

### **Background**

The Board issues three types of licenses relevant to this action: general counseling, marriage and family therapy, and substance abuse treatment. A general counseling licensee can offer marriage and family therapy or substance abuse treatment, but not vice versa. In that sense, marriage and family therapy or substance abuse treatment licenses are specialty licenses. Also,

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<sup>1</sup> <https://townhall.virginia.gov/L/ViewPReview.cfm?PRid=1673>

an individual may have a specialty license, but may lack the general counseling license (i.e., cannot practice outside the specialty area).

## **Estimated Benefits and Costs**

### *Pathways to licensure by endorsement*

The Board proposes to expand pathways to licensure by endorsement in several ways. In simple terms, licensure by endorsement allows a licensed professional in one state to obtain licensure in another state. Currently, licensure by endorsement in all three license categories requires evidence of either (i) the education and experience required for licensure by examination or (ii) post-licensure clinical practice in 24 of the last 60 months immediately preceding licensure application in Virginia. However, the proposed changes for the three license categories differ slightly.

For both general counselors and marriage and family therapists who lack the required evidence of post-licensure clinical practice,<sup>2</sup> the Board would now accept applicants if they have either (a) three years of active licensure along with a National Certified Counselor (NCC) credential issued by the National Board for Certified Counselors (NBCC), or (b) a graduate-level degree from a CACREP-accredited program. If the individual lacks an NCC credential or the degree from a CACREP-accredited program, he or she must then have ten years of active licensure. Although these are presently distinct options, after January 2022 only one option will effectively exist. At that point, the NBCC states that only those students graduating from a CACREP-accredited program will be eligible to apply for the NCC credential.<sup>3</sup>

According to the Department of Health Professions (DHP), the Board included these two options to follow the October 2019 recommendations of the National Portability Taskforce, comprised of the American Association of State Counseling Board, the Association for Counselor Education and Supervision, the American Mental Health Counselors Association, and the NBCC. The taskforce recommended several pathways, including that the applicant meet the current standards for endorsement set by the licensing board. Otherwise, the taskforce provided

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<sup>2</sup> According to DHP, there is no known NCC credential or CACREP accredited programs for substance abuse counseling specialty.

<sup>3</sup> See <https://www.nbcc.org/Assets/EducationalStandards.pdf>

other options that it recommended for applicants who also have been actively licensed as a counselor for at least three years.<sup>4</sup>

For the general counselors only, the Board proposes to accept verification of the Certified Clinical Mental Health Counselor (CCMHC) credential from the NBCC (this option replaces the credential registry of the American Association of State Counseling Boards because that registry no longer exists). After January of 2022, this option will also effectively require the applicant to have graduated from a CACREP-accredited program because the NCC credential is a prerequisite for the CCMHC.

For the substance abuse practitioners, the Board would start accepting a mental health license in good standing from any other United States jurisdiction in addition to a Virginia mental health license, and a licensing examination deemed to be substantially equivalent by the Board if the applicant is licensed in another jurisdiction.

The Board also proposes to count teaching graduate-level courses in counseling or marriage and family therapy toward the required post-licensure clinical practice for the two relevant license types.

The proposed additional pathways to licensure by endorsement would benefit a number of applicants who are now unable to be initially licensed in Virginia. Also, counting teaching graduate courses as active practice would make more individuals eligible. In 2019, DHP issued 201, 48, and 35 licenses by endorsement respectively for general counseling, marriage and family therapy, and substance abuse treatment. The proposed amendments to licensure by endorsement would add to the supply of these services, improve accessibility, and be beneficial for the Commonwealth.

Notwithstanding the clearly beneficial aspects of expanding pathways to licensure compared to the status quo, the differential treatment of graduate programs based upon their accreditation would likely directly affect the number of counselors who are eligible for licensure by endorsement, and indirectly affect the relative values of counseling degrees. Under the proposed regulations, a similarly situated counselor with a degree from a non-CACREP accredited institution would have to wait an additional seven years to access Virginia's mental

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<sup>4</sup> The taskforce's full recommendation can be found at <https://www.amhca.org/advocacy/portability/portability2019>

health services market. This delay would likely decrease the number of persons who would otherwise be eligible to practice as counselors in Virginia, and diminish the relative value of degrees from non-CACREP accredited programs compared to those with CACREP accreditation. To the extent a benefit results from this differential treatment, this decrease in the number of eligible counselors and relative value may be offset, but the Board did not provide any information to indicate the basis for the differential treatment or the nature and extent of the benefits that would result. An assessment of the impact of this differential treatment, both benefits and costs, would also require information on the accreditation status of programs for applicants seeking licensure by endorsement, but the Board reports these data are not maintained.

Although the Board reports that it is generally following the recommendations of the taskforce, it appears that the Board's proposal differs in certain aspects that limit the number of counselors who would have been eligible for licensure by endorsement under the taskforce's full recommendations. First, the taskforce recommended acceptance of degrees from a CACREP-accredited program as one pathway, but that this apply only to degrees awarded after January 1, 2025. In contrast, the Board proposes to implement this requirement when this regulation becomes effective. The Board's proposal would therefore appear to further decrease the number of non-CACREP graduates who are eligible for licensure by endorsement, and reduce the time available to a potential counseling student to adjust his or her choices regarding graduate counseling programs in light of this change. Second, the taskforce recommended acceptance of degrees awarded by a regionally accredited program before January 1, 2025. Many counseling programs may not have a program specific accreditation, but rather rely on regional accreditation for the entire institution. Because this option is not included in the proposed regulation, there may be an additional reduction in the number of counselors who would have qualified for licensure by endorsement under the taskforce's recommendations. Third, the taskforce recommends that degrees from programs that lack either CACREP or regional accreditation be accepted, if the degree was awarded prior to December 1, 2014 and the applicant has three years of active licensure. Although this option is not included in the proposed regulation, the Board's proposal to require ten years of active licensure for any applicant from a non CACREP-accredited program would also appear to decrease the number of persons who would have been eligible for licensure by endorsement under the taskforce's recommendations. To the extent a benefit results from the Board's decision to not adopt all of the taskforce's recommendations, the

likely decrease in the number of eligible counselors may be offset, but the Board did not provide any information to indicate the basis for their decision or the nature and extent of the benefits that would result.

### *Qualifying coursework*

The Board proposes to add language that would essentially deem that all applicants with degrees from CACREP-accredited programs meet the current coursework requirements.<sup>5</sup> In contrast, current language contains specific coursework requirements for licensure for each of the three practice areas. For example, the coursework requirements for professional counseling are a minimum of 60 semester hours or 90 quarter hours of graduate study with a minimum of three semester hours or 4.0 quarter hours in 12 specific areas. The specific areas are: 1) professional counseling identity, function, and ethics, 2) theories of counseling and psychotherapy, 3) counseling and psychotherapy techniques, 4) human growth and development, 5) group counseling and psychotherapy theories and techniques, 6) career counseling and development theories and techniques, 7) appraisal, evaluation, and diagnostic procedures, 8) abnormal behavior and psychopathology, 9) multicultural counseling theories and techniques, 10) research, 11) diagnosis and treatment of addictive disorders, 12) marriage and family systems theory. In addition, 600 hours of supervised internship with 240 hours of face-to-face client contact is required. Similarly, the coursework requirements for licensed marriage and family therapy and substance abuse treatment are specifically listed in the regulation.

Currently the Board reviews the applicant's transcript – course by course – often with a request for a syllabus to determine its concentration in counseling. According to DHP, the proposed change simply acknowledges that the Board has reviewed the requirements for a degree in clinical mental health counseling from a CACREP-accredited program and knows that it has met all such requirements. Thus, instead of a course-by-course review of a transcript, the proposal would allow the Board only to look at whether the degree is from a CACREP-

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<sup>5</sup> More precisely, for professional counseling, the applicant shall have successfully completed the requirements for a degree in a program accredited by CACREP in clinical mental health counseling or any other specialty approved by the Board; for marriage and family therapy the applicant shall have successfully completed the requirements for a marriage and family therapy program accredited by CACREP; for substance abuse treatment the applicant shall have successfully completed the requirements for a degree in a program accredited by CACREP in addiction counseling or any other specialty approved by the Board.

accredited program. The coursework submitted from a non-CACREP-accredited program would still need to be reviewed to ensure that it meets the specific coursework requirements. DHP states that the proposal essentially reflects the current practice the Board follows in evaluating coursework submitted and therefore does not expect any significant economic impact from this change.

However, as in the licensure by endorsement, this proposal too would likely decrease the relative value of degrees from non-CACREP accredited institutions. Although this change would ensure that a coursework from a CACREP-accredited institution would always meet the Board's standards, coursework from a non-CACREP institution would continue to be reviewed on a case-by-case basis. The added certainty stemming from this change would likely make degrees from a CACREP-accredited institution relatively more valuable.

Additionally, the Board proposes to allow an option to approve the completion of up to 100 of the 600 hours and up to 40 of the 240 hours of face-to-face client contact to be added to the hours required for residency if the academic course was less than 600 hours. The new language would facilitate licensure for some applicants from non-accredited programs. Currently, some applicants have to find an educational program that will allow them to enroll in an academic course that is comprised of internship hours. The amended language would permit graduates to obtain a resident license and complete the required internship hours in the residency. Since there is faculty oversight of an internship in an academic program, the Board believes it is still necessary for the vast majority of the internship to be completed as part of a student's educational program.

#### *Specialty license examination*

Historically, the specialty license examination has been waived for general counseling licensees if they wished to obtain a specialty license. The Board proposes to remove that waiver so that a general counseling licensee would be required to pass the specialty examination for the area if they wished to obtain a specialty license. That does not mean that a general counseling licensee can no longer practice a specialty area, but rather it means that if they wish to get a specialty license issued (e.g. for marketing purposes), now they have to pass the specialty examination. Accordingly, this particular change would introduce additional burdens on general counselors who may wish to obtain a specialty license in terms of the time required to prepare

for, take the specialty exam, and the exam fees. According to DHP, the cost for the marriage and family therapy specialty exam is \$355 and the cost for the substance abuse treatment specialty exam is \$150.

#### *Other changes<sup>6</sup>*

The Board proposes to add a \$75 fee for reinstatement of a resident license. This fee is added to cover the administrative costs of reinstatement of resident licenses. A resident who fails to renew after one year would be able to reinstate within the six-year window allowed for completion of a residency. The requirements for reinstatement of a resident license are similar to the reinstatement of a full license. An applicant for reinstatement would have to submit a current report from a national practitioner databank at a cost of \$4 per report to ensure the Board has more complete information about disciplinary actions in other states or malpractice judgements. The main intent of the amendment is to provide an allowance for a person who needs or wants a break in a residency (illness, family responsibility, etc.) to let the license lapse, but reinstate at a later time to complete the hours. Residency hours (3,400) can be completed in less than two years, so a person could have a lapse of some months and still complete the required hours within a six-year timeframe. The Board does not propose to allow reinstatement indefinitely, because there needs to be some continuity in the supervised experience of a residency and there is concern about “permanent” residents who would continuously lapse and reinstate.

A proposed new provision specifies the maintenance of records relating to supervision for a period of five years after termination or completion of supervision. According to DHP, the five-year retention is necessary to ensure records are available to residents and to the Board within the timeframe in which the resident may be applying for licensure. The requirement for retention of records by a supervisor relating to a residency should not impose costs (other than retention of a file); a licensee typically only supervises a handful of residents.

The definition for “face-to-face” is amended to include use of visual, interactive, real-time technology in the in-person delivery of clinical services. The amendment may enhance the ability to provide counseling services by telehealth and facilitate supervision of residents.

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<sup>6</sup> The proposed amendments for residents and residencies that are currently in effect through emergency action are incorporated into this periodic review to avoid confusion and conflict. The economic effects of those changes are discussed in the relevant action and are not repeated here. See the Economic Impact of <https://townhall.virginia.gov/l/viewstage.cfm?stageid=8897>

The Board proposes to add an allowance for up to two hours of continuing education credits per renewal period for attendance at board meetings/hearings. Attendance at Board meetings/hearings may increase practitioner's knowledge concerning issues affecting their profession.

Additional standards of practice and grounds for disciplinary action are proposed to be included to address issues that have arisen or for consistency with other behavioral health professional regulations. These amendments would provide further guidance to licensees on the expectations for ethical practice and give the Board more explicit grounds on which to discipline practitioners for the purpose of protecting the health, safety and welfare of the public they serve.

### **Businesses and Other Entities Affected**

Persons likely to be affected by the proposed changes are residents in counseling and licensees. According to DHP, there are 9,156 residents in professional counseling, 352 residents in marriage and family therapy, and 8 residents in substance abuse practice. There are 6,004 licensed professional counselors, 894 licensed marriage and family therapists, and 265 licensed substance abuse practitioners.

The proposed changes remove the waiver for the specialty examination for those general counselors who wish to obtain a specialty license. However, it is not clear whether the costs associated with that change clearly outweigh the benefits from other changes for the same individuals. Thus, no adverse economic impact<sup>7</sup> is indicated on general counselors.

However, the counselors who hold degrees from non-CACREP accredited institutions would be negatively affected in terms of the lower relative value of their degrees compared to the value of degrees from CACREP-accredited institutions. Since there is no offsetting benefits, an adverse impact on counselors or students in non-CACREP accredited programs is indicated.

### **Small Businesses<sup>8</sup> Affected:**

The Board reports that some persons licensed for independent practice own or are employed by small professional practices.

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<sup>7</sup> Adverse impact is indicated if there is any increase in net cost or reduction in net revenue for any entity, even if the benefits exceed the costs for all entities combined.

<sup>8</sup> Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as "a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million."

### Types and Estimated Number of Small Businesses Affected

The Board does not maintain data on the number of applicants or licensees that meet the definition of a small business.

### Costs and Other Effects

Most of the proposed amendments are expected to be beneficial as discussed above, with the exception of those that provide differential treatment regarding portability and eligible coursework requirements for programs with CACREP accreditation. To the extent counselors with non-CACREP accredited degrees seek to, operate as, or work for small businesses, an adverse impact on them would be indicated.

### Alternative Method that Minimizes Adverse Impact

The adverse impact on counselors or students with non-CACREP accredited degrees could be mitigated by adopting the additional pathways recommended by the taskforce. Specifically, the taskforce also recommended acceptance of (a) degrees from regionally-accredited programs, awarded before January 1, 2025, if the applicant also has three years of active licensure, and (b) degrees from programs without CACREP or regional accreditation if the degree was awarded prior to December 1, 2014 and the applicant has three years of active licensure.

### **Localities<sup>9</sup> Affected<sup>10</sup>**

The proposed amendments do not introduce costs for local governments. Accordingly, no additional funds would be required.

### **Projected Impact on Employment**

The proposed amendments would make it easier to obtain licensure by endorsement and may add to the supply of licensed counselors in Virginia compared to the status quo. As mentioned above, the proposed changes would likely have a negative impact on employment prospects of counselors and students with degrees in non-CACREP accredited programs while improving the prospects of CACREP accredited program graduates.

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<sup>9</sup> “Locality” can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

<sup>10</sup> § 2.2-4007.04 defines “particularly affected” as bearing disproportionate material impact.

## Effects on the Use and Value of Private Property

The proposed amendments would negatively affect the relative value of non-CACREP degrees while enhancing the value of CACREP accredited degrees.

## Legal Mandates

**General:** The Department of Planning and Budget has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia (Code) and Executive Order 14 (as amended, July 16, 2018). Code § 2.2-4007.04 requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the report should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

**Adverse impacts:** Pursuant to Code § 2.2-4007.04(D): In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance within the 45-day period.

If the proposed regulatory action may have an adverse effect on small businesses, Code § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to Code § 2.2-4007.1, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.