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Periodic Review Report of Findings

Agency name	Board of Counseling, Department of Health Professions
Virginia Administrative Code (VAC) citation	18VAC115-20 18VAC115-50 18VAC115-60
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 Professionals
Date this document prepared	2/28/19

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1 VAC7-10), and the *Virginia Register Form, Style, and Procedure Manual for Publication of Virginia Regulations*.

Acronyms and Definitions

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

CACREP = means the Council for Accreditation of Counseling and Related Educational Programs

Legal Basis

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

Regulations Governing the Practice of Professional Counseling, Regulations Governing the Practice of Marriage and Family Therapy, and Regulations Governing the Licensure of Substance Abuse Professionals are promulgated under the general authority of Chapter 24 of Title 54.1 of the Code of Virginia. Section 54.1-2400 (6) provides the Board of Counseling the general 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:

...
6. *To promulgate regulations in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.) which are reasonable and necessary to administer effectively the regulatory system. Such regulations shall not conflict with the purposes and intent of this chapter or of Chapter 1 (§ 54.1-100 et seq.) and Chapter 25 (§ 54.1-2500 et seq.) of this title. ...*

Specific authority to promulgate regulations for initial and continuing licensure of these professions is found in Chapter 35 of Title 54.1 of the Code of Virginia. The requirement for licensure is in:

§ 54.1-3506. License required.

In order to engage in the practice of counseling or marriage and family therapy or in the independent practice of substance abuse treatment, as defined in this chapter, it shall be necessary to hold a license issued by the Board.

Alternatives

Please describe any viable alternatives for achieving the purpose of the regulation that were considered as part of the periodic review. Include an explanation of why such alternatives were rejected and why this regulation is the least burdensome alternative available for achieving its purpose.

There are no alternatives to the purpose of the regulation, which is to ensure minimal competency by practitioners and protect public health and safety in the provision of counseling, marriage and family therapy, and substance abuse treatment services.

Public Comment

Please summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency response. Ensure to include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency or board. Please indicate if an informal advisory group was formed for purposes of assisting in the periodic review.

A Notice of Periodic Review was posted on Townhall and published in the Register of Regulations with comment requested from August 6, 2018 to September 5, 2018. There were 80

comments posted of Townhall (actually 79 with one duplicate). Duplicates of some of the comments were also emailed directly. All of the comments were related to two issues:

- 1) Opposition to requiring CACREP accreditation for counseling education programs as a criteria for licensure.
Agency response: The proposal to require CACREP accreditation is not included in the recommendations adopted pursuant to a periodic review. Commenters took the opportunity of a comment period on the periodic review to express opposition that has already been noted in previous comment on a NOIRA and proposed regulation in Action 4259.
- 2) Opposition to requirement that residents in counseling be supervised by a person holding a license as a professional counselor or a marriage and family therapist.
Agency response: Some of the commenters were in opposition to *proposing* such a requirement as part of the periodic review. In fact, the requirement has been in effect since August of 2016. Others incorrectly characterized the 2016 amendment as part of a regulatory reform action, outside the normal process for promulgation of regulations. In fact, the amendment requiring supervision by an LPC or MFT was not included in regulatory reform amendments that were fast-tracked and became effective in July of 2014. The rationale for the amendment in 2016 was that the Board has no regulatory or disciplinary authority over persons licensed by other boards, including psychologists, social workers and physicians. In order to effectively regulate supervision and hold supervisors accountable, the regulation was amended through the normal three-stage promulgation process. In its periodic review of regulations, the Board did not choose to reverse the regulatory action taken in 2016.

Effectiveness

Pursuant to § 2.2-4017, please indicate whether the regulation meets the criteria set out in Executive Order 14 (as amended, July 16, 2018), including why the regulation is (a) necessary for the protection of public health, safety, and welfare, and (b) is clearly written and easily understandable.

The Regulatory Committee thoroughly reviewed the regulations, noted that they are mandated by the law and necessary for public health, welfare and safety, and recommended several amendments for greater clarity and client protection.

Decision

Please explain the basis for the rulemaking entity’s decision (retain the regulation as is without making changes, amend the regulation, or repeal the regulation).

The Regulatory Committee of the Board reviewed all sections of Chapter 20, 50, and 60 in three open meetings and recommended consideration of amendments through the issuance of a Notice of Intended Regulatory Action, which was subsequently adopted by the Board.

Small Business Impact

As required by § 2.2-4007.1 E and F of the Code of Virginia, include a discussion of the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation from the public; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) 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, discuss why the agency's decision, consistent with the stated objectives of applicable law, will minimize the economic impact of regulations on small businesses.

(1) The regulation is necessary for public protection since there is a statutory mandate for licensure in: **§ 54.1-3506. License required.**

In order to engage in the practice of counseling or marriage and family therapy or in the independent practice of substance abuse treatment, as defined in this chapter, it shall be necessary to hold a license issued by the Board.

(2) The comments on the periodic review related to: 1) a requirement for accreditation of counseling programs by CACREP; and 2) the restriction of the type of license that must be held by a person providing supervision to someone in a counseling residency. The requirement for accreditation has been submitted in another regulatory action and is not included in the periodic review NOIRA. The restriction of supervision by professionals with other licenses has been in effect since August 2016; the Board did not identify a problem with the current regulation and did not elect to reverse that regulation in its periodic review.

(3) The regulation was reviewed and amended in 2009 and again in 2014 for clarity and for ease of understanding. Additional clarifications and changes are recommended, such as additional pathways to licensure by endorsement to increase portability into Virginia.

(4) These regulations do not overlap, duplicate, or conflict with state or federal law.

(5) Amendments to this chapter have been promulgated 13 times from in the last 12 years to update or eliminate unnecessary requirements, including two renewal fee reductions in 2007 and 2010.