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Final Regulation Agency Background Document

Agency name	Board of Counseling, Department of Health Professions
Virginia Administrative Code (VAC) citation(s)	18VAC115-30-10 et seq.
Regulation title(s)	Regulations Governing the Certification of Substance Abuse Counselors
Action title	Updating and clarifying regulations
Date this document prepared	February 12, 2019

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*.

Brief Summary

Please provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

The Board has amended regulations for certified substance abuse counselors (CSAC) and counseling assistants to clarify portions that have confused applicants, add more specific requirements for supervised practice to better ensure accountability and quality in the experience, add time limits for completion of experience to avoid perpetual supervisees who may continue to practice without passage of an examination and completion of certification, add requirements for continuing education as a requisite for renewal to ensure on-going competency to practice, and place additional standards of practice in regulation to address issues the Board has seen in complaints and disciplinary proceedings and for consistency with other professions in behavioral health.

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.

CSAC = certified substance abuse counselor
CSAC-A = certified substance abuse counseling assistant

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 8, 2019, the Board of Counseling adopted final amendments to 18VAC115-30-10 et seq., Regulations Governing the Certification of Substance Abuse Counselors.

Mandate and Impetus

Please list all changes to the information reported on the Agency Background Document submitted for the previous stage regarding the mandate for this regulatory change, and any other impetus that specifically prompted its initiation. If there are no changes to previously-reported information, include a specific statement to that effect.

There are no changes to the impetus for this regulation, which was a periodic review.

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 of the Board of Counseling are promulgated under the general authority of Title 54.1, Chapter 24 of the Code of Virginia.

Chapter 24 establishes the general powers and duties of health regulatory boards including the responsibility to promulgate regulations in accordance with the Administrative Process Act which are reasonable and necessary.

§ 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 (§2.2-4000 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 mandate for the Board of Counseling to regulate CSACs is found in:

§ 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:

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.

The scope of practice for these professions is found in:

§ 54.1-3507.1. Scope of practice, supervision, and qualifications of certified substance abuse counselors.

A. A certified substance abuse counselor shall be (i) qualified to perform, under appropriate supervision or direction, the substance abuse treatment functions of screening, intake, orientation, the administration of substance abuse assessment instruments, recovery and relapse prevention planning, substance abuse treatment, case management, substance abuse or dependence crisis intervention, client education, referral activities, record keeping, and consultation with other professionals; (ii) qualified to be responsible for client care of persons with a primary diagnosis of substance abuse or dependence; and (iii) qualified to supervise, direct and instruct certified substance abuse counseling assistants. Certified substance abuse counselors shall not engage in independent or autonomous practice.

B. Such counselor shall also be clinically supervised or directed by a licensed substance abuse treatment practitioner, or any other mental health professional licensed by the Department, or, in an exempt setting as described in § 54.1-3501, another person with substantially equivalent education, training, and experience, or such counselor shall be in compliance with the supervision requirements of a licensed facility.

C. Pursuant to regulations adopted by the Board, an applicant for certification as a substance abuse counselor shall submit evidence satisfactory to the Board that the applicant has (i) completed a specified number of hours of didactic substance abuse education courses in a

program or programs recognized or approved by the Board and received a bachelor's degree from a college or university accredited by an accrediting agency recognized by the Board; and (ii) accumulated a specified number of hours of experience involving the practice of substance abuse treatment while supervised by a licensed substance abuse treatment practitioner, or by any other mental health professional licensed by the Department, or by a certified substance abuse counselor who shall submit evidence satisfactory to the Board of clinical supervision qualifications pursuant to regulations adopted by the Board, such number of hours being greater than the number of hours required of a certified substance abuse counseling assistant. The applicant shall also pass an examination as required by the Board.

§ 54.1-3507.2. Scope of practice, supervision, and qualifications of certified substance abuse counseling assistants.

A. A certified substance abuse counseling assistant shall be qualified to perform, under appropriate supervision or direction, the substance abuse treatment functions of orientation, implementation of substance abuse treatment plans, case management, substance abuse or dependence crisis intervention, record keeping, and consultation with other professionals. Certified substance abuse counseling assistants may participate in recovery group discussions, but shall not engage in counseling with either individuals or groups or engage in independent or autonomous practice.

B. Such certified substance abuse counseling assistant shall be supervised or directed either by a licensed substance abuse treatment practitioner, or by any other mental health professional licensed by the Department, or by a certified substance abuse counselor, or, in an exempt setting as described in § 54.1-3501, another person with substantially equivalent education, training, and experience, or such counseling assistant shall be in compliance with the supervision requirements of a licensed facility.

C. Pursuant to regulations adopted by the Board, an applicant for certification as a certified substance abuse counseling assistant shall submit evidence satisfactory to the Board that the applicant has (i) received a high school diploma or its equivalent, (ii) completed a specified number of hours of didactic substance abuse education in a program or programs recognized or approved by the Board, and (iii) accumulated a specified number of hours of experience and completed a practicum or an internship involving substance abuse treatment, supervised either by a licensed substance abuse treatment practitioner, or by any other mental health professional licensed by the Department, or by a certified substance abuse counselor. The applicant shall also pass an examination, as required by the Board.

§ 54.1-3507.3. Use of titles.

No person shall claim to be, or use the title of, a substance abuse treatment practitioner, a substance abuse counselor, or a substance abuse counseling assistant unless he has been licensed or certified as such pursuant to §§ 54.1-3507, 54.1-3507.1 or § 54.1-3507.2.

Purpose

Please explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it's intended to solve.

The Board has added more specificity to the supervised experience requirements and limit the amount of time a person may take to obtain experience and certification. By doing so, clients receiving substance abuse counseling services are more assured of the oversight for those working under supervision and of the competency of their counselors once certified. Additional standards of conduct and causes for disciplinary action will provide further guidance to counselors and assistants 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.

Substance

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

The following sections have been identified for amendments:

Part I is amended to update several definitions and fee requirements and add a section for rules on maintaining current name and address with the Board.

Part II is amended to clarify prerequisites for certification, including changing "documentation" or "affidavit" to "verification" or "attestation" to accommodate on-line applications. The Board is amending requirements for endorsement to include verification of a passing score on a board-approved examination. The Board is updating and adding to the course content listed in section 50. The hours of experience in performing certain were moved from the section on education (50) to the section on experience (60).

In section 60, the Board has added a requirement for completion of half of one's education and for registration of supervision approved by the Board prior to the start of supervised practice. There is also be a time limit set on the acquisition of hours of supervision with an allowance for an appeal to the Board for an extension. The minimum hours of supervision by the supervisor is clarified, similar to recent changes in the counseling regulations. Subsection C is amended to require some professional training in supervision for supervisors, and the subsection on supervisory responsibilities is amended to specify how supervisees are to identify themselves to clients and how long documentation of supervision must be maintained.

Sections 61 and 62 on requirements for substance abuse counseling assistants are clarified and updated with amendments similar to those for substance abuse counselors.

Part III (Examinations) is incorporated into Part II on Requirements for Certification and amended to give a candidate approved to sit for an examination two years to take the exam and pass it. After the applicant has applied twice and not passed the examination, he would be required to complete an additional six months of supervision.

Part IV on renewal and reinstatement is amended to add requirements for continuing education and more specific requirements for persons who are seeking reinstatement, including

demonstration of continued competence and submission of a report from the National Practitioner Data Bank.

Part V on standards of practitioner is amended to include standards from other behavioral sciences professions that are currently missing in the CSAC regulations, such as maintenance of client records, informed consent, and confidentiality provisions. Likewise, the grounds for disciplinary action is revised for more specificity and expanded to include such things as performance of an act likely to deceive, defraud, or harm the public.

Issues

Please identify the issues associated with the regulatory change, 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, include a specific statement to that effect.

- 1) The primary advantage of the amendment is more assurance of competency for certified substance abuse counselors who are increasingly important practitioners in working with persons who have substance abuse issues. There are no disadvantages.
 - 2) There are no advantages or disadvantages to the Commonwealth.
 - 3) The Director of the Department of Health Professions has reviewed the proposal and performed a competitive impact analysis. The Board is authorized under § 54.1-2400 to “promulgate regulations in accordance with the Administrative Process Act which are reasonable and necessary to administer effectively the regulatory system.”
- The increased accountability and addition of continuing education are the foreseeable result of the statute requiring the Board to protect the health and safety of patients in the Commonwealth.

Requirements More Restrictive than Federal

Please list all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any requirement of the regulatory change which is more restrictive than applicable federal requirements. If there are no changes to previously-reported information, include a specific statement to that effect.

There are no applicable federal requirements.

Agencies, Localities, and Other Entities Particularly Affected

Please list all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any other state agencies, localities, or other entities that are particularly affected by the regulatory change. If there are no changes to previously-reported information, include a specific statement to that effect.

Other State Agencies Particularly Affected – Agencies that employ or reimburse CSACs or CSAC-As may be affected. They will benefit by the requirement that persons intended to obtain supervision for certification must pre-register and be approved by the Board. Registration with the Board is beneficial to agencies that employ CSACs, such as DBHDS, and DMAS that reimburses for their services because, once registered, those persons have oversight by the Board of Counseling.

Localities Particularly Affected - None

Other Entities Particularly Affected - None

Public Comment

Please summarize all comments received during the public comment period following the publication of the previous stage, 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. If no comment was received, enter a specific statement to that effect.

Proposed regulations were published in the Virginia Register of Regulations and posted on the Virginia Regulatory Townhall on October 29, 2018. Public comment was requested for a 60-day period ending December 28, 2018.

Jennifer Faison, representing the Virginia Association of Community Services Boards, commented that VACSB does not have concerns about the proposed but suggested that some of the Code citations referenced in regulation may need to be clarified.

Board response: The comment about changes to the Code was noted but action is outside the purview of the Board.

A Public Hearing before the Board was held on November 1, 2018 at which the following comment was received:

Chuck Wilcox, representing the Virginia Association of Addiction Professionals, suggested that the Board consider listing the scope of practice and the supervisor responsibility for each regulated substance abuse credential. He also suggested the Board detail this information on the Board website.

Board response: On February 8, 2019, the Board adopted a new guidance document to delineate the scopes of practice for each of the regulated substance abuse credentials.

Detail of Changes Made Since the Previous Stage

*Please list all changes made to the text since the previous stage was published in the Virginia Register of Regulations and the rationale for the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. *Please put an asterisk next to any substantive changes.*

There were no changes to the previous stage.

Detail of All Changes Proposed in this Regulatory Action

Please list all changes proposed in this action and the rationale for the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. ** Please put an asterisk next to any substantive changes.*

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
10	n/a	Sets out definitions for words & terms used in the Chapter	New definitions are added for “contact hour” and “NCC AP” because the terms are used in new provisions. The term “regionally accredited” is defined for clarity in meaning; the term NAADAC is amended to use the title now used by the organization.
n/a	15	Currently in section 110	The provision of section 15 are currently in subsection C of section 110 on renewal. Since the requirement to maintain a current name and address is applicable at all times, and not just on renewal, the language was moved to Part I, General Provisions.
30	n/a	Sets out fees for certification and renewal	<p>The fee for addition or change of supervisor is \$25; a change or addition of the setting and role of a supervisee also must be reported to the Board and require the same administrative functions. Therefore, the fee should be applicable to any change to be consistent with other professions under Counseling and to offset costs associated with registration of supervision.</p> <p>A fee of \$25 is added for verification of certification to another state or entity. Such verification can be obtained at no cost through License Lookup on-line, but if a paper verification is required, the fee will offset cost of staff time and postage.</p> <p>Subsection C is added, consistent with other Counseling regulations to specify that examination fees must be paid directly to the exam service. This is current policy but is clarified in regulation.</p>
40	n/a	Sets out requirements for certification by examination for CSACs	<p>Subsection A is amended to include language currently found in section 90 relating to passage of an examination. There is a new requirement that the exam be passed within 2 years of board approval, after which a person must reapply in accordance with regulations in effect at that time. If the applicant has re-applied twice and has still not passed, he will not be approved to sit for the examination again unless he can provide evidence of extenuating circumstances for failure to pass within a four-year period.</p>

			<p><i>The Board is concerned about applicants who attempt passage multiple times over a period of years. If they do finally pass, there may be a large gap between their education and supervised experience and exam passage, which raises questions about competency to practice.</i></p> <p>Subsection B is amended to clarify certification provisions relating to submission of transcripts and attestation of supervisors. The requirement for “documentation of other licenses was changes to “verification” because it can be achieved electronically.</p> <p><i>The Board also specifies that the applicant could have no unresolved against in another state, and that any disciplinary history would be considered on a case-by-case basis to determine whether it represents a cause for denial. The Board has always had authority to deny based on an unresolved case or prior discipline, but the language is more direct.</i></p> <p>There is also a requirement for an attestation that the applicant has read and understands the laws and regulations, which is currently in the endorsement provision.</p>
45	n/a	Sets out requirements for certification by endorsement for CSACs	<p>There are several clarifying amendments, including changing the word “affidavit” to “attestation.” An affidavit requires a notary public signature, which is an unnecessary burden.</p> <p>The provision on passage of an examination was moved from #6 to new #7; the “deemed equivalent” language was eliminated because equivalency of examinations if very difficult to determine. The new provision requires passage of an examination in another jurisdiction or passage of a national examination at the level of certification the applicant is seeking.</p>
50	n/a	Sets out educational requirements for certification of CSACs	<p>This section currently includes the didactic and experiential requirements; the 180 hours of experience in performance of tasks is deleted in subsection B and the education hours reduced from 400 to 240.</p> <p>The listing of providers of didactic education is expanded to include governmental agencies, school systems and licensed health facilities to expand the availability for training of substance abuse counselors.</p> <p>In subsection B, it is specified that 120 of the 240 hours must be completed prior to registration of supervision to ensure some didactic training for practical experience. The clock hours in each area of coursework is set at 16 and the areas expanded to include cooccurring disorders, cultural competency, and prevention, screening and assessment of substance use and abuse. The</p>

			specified hours account for 208 of the required 240, so an applicant can supplement with electives of his choosing.
60	n/a	Sets out the experience requirements for CSACs	<p>The requirement for registration of supervision is amended to provide for persons who may have had supervision in another state and would not have pre-registered with the Virginia board. Currently, regulations provide that supervision without board approval will not be accepted, which is an unreasonable burden for an applicant from another state.</p> <p>Additionally, the term “verification” is changed to “attestation” to eliminate the need for a notary public.</p> <p>Prior to approval of supervision, the Board also requires documentation of a degree and evidence of completion of at least 120 hours of education. Subsection B is amended to:</p> <ol style="list-style-type: none"> 1) Change the requirement of supervised experience from “per week” to “per 40 hours of work experience.” Strictly applied, the “per week” requirement would mean that a supervisee could not miss a single week for illness or vacation – which is not the intent of the rule. 2) Set parameters for completion of supervision so a person could not become a “permanent” supervisee and not complete certification. The standard is not less than 12 months and not more than 60 months to complete 2,000 hours – so someone could complete supervision by working full-time for one year or by working part-time over a five-year period. Persons who are currently under supervision will have five years (60 months) to finish once these regulations become effective. An extension is possible for extenuating circumstances. <p>Subsection B #4 provides that supervised experience obtained more than 10 years from effective date of this regulation will not be accepted for certification by examination, but the board may make an exception for an applicant who has been providing substance abuse counseling for at least 2,000 hours within the past 5 years. <i>The purpose is to ensure the relative currency of the supervised experience.</i></p> <p>Subsection B #5 requires supervisees to use their names and the title supervisee in all written communications. Clients must be informed in writing of the supervisee's status and the supervisor's name, professional address, and phone number. <i>The purpose is to ensure that clients know who is providing the services and to understand from whom this person is receiving supervision.</i></p>

			<p>Subsection B #6 was moved from section 50 to section 60. The only change is a reduction in hours from 180 to 160 hours of experience performing tasks with substance abuse clients under supervision.</p> <p>Changes to subsection C are clarifying and not substantive. Supervisors are currently required to have an active, unrestricted license.</p> <p>The new language in subsection D requires supervisors to have professional training in supervision. Such training may be counted towards the continuing education requirements for a licensee or a CSAC. <i>Training for supervisors is required for other professions under this Board; it is necessary because the Board is aware of situations in which the supervisor did not understand his role and responsibility and did not appropriately provide training and oversight for a supervisee.</i></p> <p>Amendments to subsection E are clarifying and not substantive. There is reference to a form for verification of supervision and a requirement that it be maintained for five years.</p>
61	n/a	Sets out general requirements for certification by exam for CSAC-A	The amendments to section 61 are necessary for consistency with section 40, which sets out requirements for CSACs.
62	n/a	Sets out the educational requirements for CSAC-A	<p>In subsection A, amendments are necessary to clarify and update language. An approved provider of education which no longer exists is deleted, and governmental agencies, public schools, and licensed health facilities are added.</p> <p>The hours of didactic education are not changed (120) but the distribution of those hours has changed from 10 hours in 8 areas to 8 hours in 13 areas. The new subject areas are necessary to equip assistants to work in the current environment of substance abuse.</p>
n/a	63	Sets out the experience required for CSAC-A	The 180 hours of experience is currently part of section 62. In the proposed regulation, the didactic education is specified in section 62 and the experiential training is set out in 63. There are no substantive changes.
90	n/a	Examination requirements	Section 90 is repealed and its contents incorporated into other sections.
110	n/a	Sets out the requirements for annual renewal	<p>Subsection B is amended to specify a requirement for continuing education.</p> <p>Subsection C is deleted and its content moved to General Provisions</p>
n/a	111	Sets out requirements for continuing education	Subsection A will require certified substance abuse counselors to complete a minimum of 10 contact hours of continuing education in substance abuse and

			<p>certified substance abuse counseling assistants to complete a minimum of five contact hours of continuing education in substance abuse prior to renewal each year.</p> <p><i>All professions and occupations regulated by the Board of Counseling are required to have continuing education to provide some assurance of minimal competency. Registered QMHPs and peer recovery specialists are required to obtain eight hours for renewal, so the 10 hours for a CSAC or five hours for a CSAC-A is consistent with the professions that are not licensed; those professionals are required to obtain 20 hours for an annual renewal.</i></p> <p>The continuing education hours must be offered by an approved provider and the course content must be consistent with sections 50 or 62.</p> <p><i>The course offerings and approved providers are consistent with the educational coursework required for initial certification. There is a broad range of offerings, almost all of which can be taken on-line or are offered at no charge as in-service training by employers.</i></p> <p>A newly certified CSAC or CSAC-A is not required to attest to completion of continuing education for the first renewal.</p> <p>Subsections B and C authorize the board to grant an extension for good cause or an exemption for specific reasons of up to one year upon written request from the certificate holder prior to the renewal date.</p> <p>Subsection D requires certificate holders to maintain original documentation, including official transcripts showing credit hours earned or certificates of participation, for a period of three years following renewal.</p> <p>Subsection E authorizes the board to conduct an audit of certificate holders to verify compliance with the requirement for a renewal period. Upon request, a certificate holder must provide documentation of credit hours or participation.</p> <p>Subsection F states that continuing education hours required by disciplinary order cannot be used to satisfy renewal requirements.</p>
120	n/a	Sets out additional requirements for reinstatement of a lapsed certificate	<p>The new requirements include verification of any other health or mental health license or certificate and a current report from the National Practitioner Data Bank.</p> <p><i>The additional requirements are necessary to ensure that there are no grounds for denial of reinstatement.</i></p>

140	n/a	Sets out the standards for practice as a CSAC or a CSAC-A	<p>The changes and additions to this section are all intended to establish the same standards and accountability for these professions as for all others regulated by the Board. These standards have not been updated in almost 15 years, so there were several related to confidentiality, record-keeping, maintenance of competency, termination of the counseling relationship, and dual relationships that are evident in other behavioral science rules but are missing in this chapter.</p> <p>Subsection E is added to ensure certificate holders are aware of their statutory obligation to inform clients of their right to report misconduct by other mental health providers.</p>
150	n/a	Sets out the grounds for disciplinary actions or denial of certification	<p>As with the standards of practice, the grounds for action have not been recently updated; they have been made consistent with other professions to include:</p> <ul style="list-style-type: none"> • Performance of an act likely to deceive, defraud, or harm the public; • Intentional or negligent conduct that causes or is likely to cause injury to a client or clients; • Failure to cooperate with an employee of the Department of Health Professions in the conduct of an investigation; • Failure to report evidence of child abuse or neglect as required in § 63.2-1509 of the Code of Virginia, or elder abuse or neglect as required in § 63.2-1606 of the Code of Virginia; • Action taken against a health or mental health license, certification, registration, or application in Virginia or another jurisdiction.