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## Fast-Track 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 18VAC115-50 18VAC115-60
<b>Regulation title(s)</b>	Regulations Governing the Practice of Professional Counselors Regulations Governing the Practice of Marriage and Family Therapy Regulations Governing the Licensure of Substance Abuse Professionals
<b>Action title</b>	Exemption from CE for first renewal and endorsement for licensure of substance abuse professionals
<b>Date this document prepared</b>	5/22/17

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 (preferably no more than 2 or 3 paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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.*

In this fast-track action, the Board of Counseling will 1) grant an exemption from continuing education requirements for the first renewal of a license issued by examination; and 2) amend the endorsement requirements to make it possible for persons who hold other behavioral health licenses to obtain a substance abuse treatment professional license.

### 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.*

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

### 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.*

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On May 19, 2017, the Board of Counseling amended 18VAC115-20-10 et seq., Regulations Governing the Practice of Professional Counselors; 18VAC115-50-10 et seq., Regulations Governing the Practice of Marriage and Family Therapists; and 18VAC115-60-10 et seq., Regulations Governing the Licensure of Substance Abuse Professionals.

### 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.*

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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. ...

Specific authority for regulation of the profession of counseling is found in Chapter 35 of Title 54.1:

**§ 54.1-3503. Board of Counseling.**

*The Board of Counseling shall regulate the practice of counseling, substance abuse treatment, and marriage and family therapy.*

**§ 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*

**§ 54.1-103. Additional training of regulated persons; reciprocity; endorsement.**

*A. The regulatory boards within the Department of Professional and Occupational Regulation and the Department of Health Professions may promulgate regulations specifying additional training or conditions for individuals seeking certification or licensure, or for the renewal of certificates or licenses.*

**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.*

The purpose of the proposal to amend the licensure by endorsement regulation in Chapter 60 is to open a pathway for those who hold another mental health license to be licensed in substance abuse treatment if they have specific coursework and training in the field. With the crisis of substance abuse being experienced in the Commonwealth, a regulatory action to encourage more treatment providers, who can offer services as a licensee and supervise the services of certified or registered providers, may increase access to care and ultimately offer greater protection for the safety, health and welfare of all citizens.

The exemption from continuing education for newly licensed persons will not affect the public health and safety since their competency to practice has been determined by examination, education and a supervised residency within the period immediately prior to licensure.

**Rationale for using fast-track process**

*Please explain the rationale for using the fast-track process in promulgating this regulation. Why do you expect this rulemaking to be noncontroversial?*

The actions proposed are permissive and less restrictive than current regulations. They will benefit first-time licensees and some applicants for licensure by endorsement for the substance abuse treatment professional license. Therefore, they are not expected to be controversial.

**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.*

<p>115-20-105 115-50-95 115-60-115</p>	<p>Subsection F is added to provide that a person who was licensed by examination is exempt from meeting continuing competency requirements for the first renewal following initial licensure.</p>
<p>115-60-50</p>	<p>In #6 of subsection A, the requirement for official transcripts documenting completion of all the education requirements prescribed in sections 60 and 70 is deleted, so an applicant for licensure by endorsement will not need to obtain an additional master’s degree in substance abuse. There are also amendments to add a requirement for an official transcript to indicate completion of a 60-hour master’s degree in mental health and completion of 12 hours of didactic training in substance abuse competencies.</p> <p>Because the credentials registry referenced in subsection B no longer exists, that subsection is deleted.</p>

**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. Less restrictive regulation for licensure by endorsement for the LSATP license may result in more licensed providers to both deliver and supervise substance abuse services.
- 2) There are no advantages or disadvantages to the agency or 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 proposed amendments are less restrictive and permissive. There are no additional requirements that would constitute a competitive disadvantage or have an impact on competition.

**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.

**Regulatory flexibility analysis**

*Pursuant to § 2.2-4007.1B of the Code of Virginia, please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.*

To achieve less restrictive regulations, there are no alternative methods, other than the promulgation of amendments to the licensure requirements.

**Economic impact**

*Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact.*

<b>Projected cost to the state to implement and enforce the proposed regulation, including:</b>	a) As a special fund agency, the Board must
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<p><b>a) fund source / fund detail; and b) a delineation of one-time versus on-going expenditures</b></p>	<p>generate sufficient revenue to cover its expenditures from non-general funds, specifically the renewal and application fees it charges to practitioners for necessary functions of regulation; b) The agency will incur no costs for electronic notifications to the Public Participation Guidelines. There are no on-going expenditures relating amendments to regulations for professional counselors.</p>
<p><b>Projected cost of the new regulations or changes to existing regulations on localities.</b></p>	<p>None</p>
<p><b>Description of the individuals, businesses, or other entities likely to be affected by the new regulations or changes to existing regulations.</b></p>	<p>The entities that are likely to be affected by these regulations are persons who would like to obtain licensure by endorsement as a substance abuse treatment professional and those persons who are newly licensed by examination.</p>
<p><b>Agency's best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected.</b> Small business means a business entity, including its affiliates, that: a) is independently owned and operated and; b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>It is unknown how many applicants for LSATP licensure may be affected. In the 1<sup>st</sup> quarter of 2017, there were 254 licenses issued; in the 2<sup>nd</sup> quarter of 2017, there were 427; in the 3<sup>rd</sup> quarter of 2017, there were 443. It is not known how many of those were licensed by endorsement and would not qualify for the first renewal exemption. However, it is likely the majority of those were first-time licensees and will qualify for an exemption on their first renewal.  It is estimated that the majority of LPC's operate their practices within a small business.</p>
<p><b>All projected costs of the new regulations or changes to existing regulations for affected individuals, businesses, or other entities. Please be specific and include all costs including: a) the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; and b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.</b></p>	<p>There are no costs to small businesses or other entities.</p>
<p><b>Beneficial impact the regulation is designed to produce.</b></p>	<p>Newly licensed persons will not incur the costs for obtaining CE. Persons who hold another mental health license will be able to apply for a LSATP license without having to obtain a master's degree in substance abuse courses.</p>

### Alternatives

*Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.*

There are no less costly or intrusive alternatives to regulation of the profession as mandated by the law. This proposal represents less burdensome and intrusive alternatives to current regulations.

### Public participation notice

*If an objection to the use of the fast-track process is received within the 30-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall: 1) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register; and 2) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.*

### 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 proposal has not impact on the institution of the family and family stability.

### Detail of changes

*Please list all changes that are being proposed and the consequences of the proposed changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action. If the proposed regulation is intended to replace an emergency regulation, please follow the instructions in the text following the three chart templates below.*

Current section number	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
115-20-105	Establishes the	Subsection F is added to provide that a person who was

<p>115-50-95 115-60-115</p>	<p>requirements for continuing competency for renewal of licensure</p>	<p>licensed by examination is exempt from meeting continuing competency requirements for the first renewal following initial licensure.</p> <p><i>Since competency has recently been established during the licensure procedure, the rationale for requiring continuing competency does not apply. Newly licensed persons will benefit from an exemption from CE for the first renewal of their licenses.</i></p>
<p>115-60-50</p>	<p>Establishes requirements for licensure by endorsement as a substance abuse professional</p>	<p>In #6 of subsection A, there is a requirement for official transcripts documenting completion of education requirements prescribed in sections 60 and 70. By requiring the same degree and coursework as is required for initial licensure by examination, the current regulation virtually negate the possibility of licensure by endorsement. The proposal will delete #6 and add a requirement for an official transcript to indicate completion of a 60-hour master's degree in mental health and of 12 hours of didactic training in substance abuse competencies.</p> <p><i>The impact of the proposal will greatly reduce the burden of licensure by endorsement and may encourage more practitioners to seek the LSATP license.</i></p> <p>The deletion of subsection B is clarifying because the credentials registry referenced no longer exists. Deletion will reduce any possible confusion for applicants.</p>