



## 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: 5371 / 8897**  
April 13, 2020

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

Pursuant to a legislative mandate, the Board of Counseling (Board) proposes to switch from a registration approach to a temporary licensing approach for regulating resident counselors.

### **Background**

Chapter 428 of the 2019 General Assembly<sup>1</sup> mandated the Board “*to promulgate regulations for the issuance of temporary licenses to individuals engaged in a counseling residency so that they may acquire the supervised, postgraduate experience required for licensure.*” The Board adopted emergency regulations<sup>2</sup> that established temporary licenses for residency in professional counseling, marriage and family therapy, and substance abuse treatment to comply with the mandate. All persons previously registered for supervised practice were grandfathered with a temporary license. This action replaces the emergency regulations.

Prior to the legislative mandate, counselor candidates under the three counseling regulations affected by this action registered their residency (i.e. a postgraduate, supervised clinical experience) with the Board. Under the new law, resident counselors are issued a temporary license to complete their residency in counseling. Thus, the main difference is

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<sup>1</sup> <https://lis.virginia.gov/cgi-bin/legp604.exe?191+ful+CHAP0428>

<sup>2</sup> <https://townhall.virginia.gov/l/ViewStage.cfm?stageid=8734>

between issuing a temporary license versus registering the residency with the Board. However, an important limitation, that is a resident can practice only under supervision, remains unchanged.

### **Estimated Benefits and Costs**

This action mainly replaces the registration approach for residents in professional counseling, marriage and family therapy, and substance abuse treatment with that of a temporary licensing approach. Having a temporary license rather than having the residency registered with the Board may encourage some supervisors billing resident's services to some third-party payors. For example, according to the Department of Health Professions (DHP), Virginia Medicaid has allowed billing for resident's services before this change and would continue to do so. Thus, to the extent reimbursement policies of the payors allow, more supervisors may start billing for resident services as a "licensed" professional, possibly at a lower rate than for an independent practitioner. Such a change may occur if it benefits the supervisor, the payor, and the resident.

The Board also proposes several fee changes. The \$30 fee for adding or changing supervisor or the work site under the registration approach is replaced with the \$30 fee for annual renewal of the temporary license. According to DHP, on average, a resident used to make two such changes each year and used to pay a \$30 fee for each. Under the new regulation, a one-time \$30 fee for annual renewal of the temporary license would suffice, reducing the fee burden on residents by one half on average.

A "pre-review of education only" fee of \$75 would be established. According to DHP, the Board gets requests from potential applicants for a review of a person's educational credentials to see whether they meet the qualifications for full licensure. Currently, the only way that can be done is for him to submit an application for licensure (which includes many other requirements as well). The \$75 fee would allow such a review, which is typically a review of the transcript – course by course – often with request for a syllabus to determine content and a review of the program itself to determine its concentration in counseling. If it is determined that the person's education does not qualify for licensure, he may be able to remedy the deficiency. If not, he is spared the expense of obtaining the hours of supervised experience and sitting for the examination. Thus, the "pre-review of education only" option is expected to benefit the residents who are interested in applying for a full license when the time comes, but who does not know

whether their educational background would meet the qualifications for full licensure. The new “pre-review of education only” option would encourage such applications and may lead to full licenses being issued sooner.

The Board proposes a new \$10 fee for late temporary license renewal.<sup>3</sup> As with any other late fees, this fee would likely promote timely renewal applications. The \$65 fee for application and initial temporary licensure for a resident is also established, but is not expected to create any economic effect as this is the current fee for registration of supervision.

The remaining proposed changes are mainly intended to align the new temporary license requirements with the full license requirements. Of those, some are slightly more stringent than the current standards. These include more rigorous background requirements (submission of additional report from a national practitioner databank at a cost of \$4 per report and history of disciplinary actions which can be obtained without a charge), completion of three hours of continuing education (can be obtained online at no cost), and clearer consumer disclosure requirements (that the resident does not have authority for independent practice and is under supervision). The other requirements under this category are either comparable or even less stringent than the current requirements. Those include the establishing time limits to complete the residency (a resident must pass the exam within six years which is comparable to currently required four years to complete the residency and two years to pass the exam), establishing renewal times (annual renewal in the month of initial issuance), and new elements required for renewal (attestation that a supervisory contract is in effect as opposed to notifying the Board each time there is a change). Overall these requirements may introduce a marginal burden on the applicants in terms of the time to complete the application, but would also help ensure greater accountability and information about the residency.

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

When the emergency regulation became effective, there were 9,156 residents in counseling, 352 residents in marriage and family therapy, and 8 residents in substance abuse treatment all whom were grandfathered with a temporary license.<sup>4</sup> Since the Board recently started issuing temporary licenses for residents, there is not enough history to accurately assess

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<sup>3</sup> According to DHP, late fees are set approximately 1/3 of the renewal fee.

<sup>4</sup> Data source: DHP

the likely number of applications on an ongoing basis. However, through March 2020, there were 177, 7, and 2 applications respectively for residency in licensed professional counseling, marriage and family therapy, and substance abuse treatment, but DHP expects that the majority of application will come after graduation in May/June.

As noted above, some of the changes are beneficial to counselor candidates and some are slightly more restrictive than before. It is not clear whether the additional costs would exceed the benefits for the candidates. Thus, no adverse economic impact<sup>5</sup> on counselor candidates is indicated.

### **Small Businesses<sup>6</sup> Affected:**

The proposed amendments do not appear to adversely affect small businesses.

### **Localities<sup>7</sup> Affected<sup>8</sup>**

The proposed amendments potentially affect all 132 localities. The proposed amendments do not introduce costs for local governments. Accordingly, no additional funds would be required.

### **Projected Impact on Employment**

The proposed amendments do not appear to directly affect total employment.

### **Effects on the Use and Value of Private Property**

The proposed amendments do not affect real estate development costs.

### **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.

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<sup>5</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>6</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.”

<sup>7</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>8</sup> § 2.2-4007.04 defines “particularly affected” as bearing disproportionate material impact.

**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.