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Emergency Regulation and Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Board of Counseling, Department of Health Professions
Virginia Administrative Code (VAC) citation(s)	18VAC115-20 18VAC115-50 18VAC115-60
Regulation title(s)	Regulations Governing the Practice of Professional Counseling Regulations Governing the Practice of Marriage and Family Therapy Regulations Governing the Licensure of Substance Abuse Practitioners
Action title	Issuance of a resident license
Date this document prepared	8/22/19

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 VAC 7-10), 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 the subject matter, intent, and goals 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 or changes. If applicable, generally describe the existing regulation.

Regulations implement the statutory mandate for issuance of a temporary license for a residency in counseling. The amendments set fees for initial and renewal of a resident license, qualifications for the issuance of a license and for its renewal, limitations on the number of times a resident may renew the temporary license, and a time limit for passage of the licensing examination. Amendments in Chapter 20 for professional counselors are duplicated in Chapter

50 for marriage and family therapists and in Chapter 60 of licensed substance abuse treatment practitioners.

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.

N/A

Mandate and Impetus (Necessity for Emergency)

Please explain why this rulemaking is an emergency situation in accordance with Virginia Code § 2.2-4011 A and B. In doing so, please either:

- a) Indicate whether the Governor’s Office has already approved the use of emergency regulatory authority for this regulatory change.*
- b) Provide specific citations to Virginia statutory law, the appropriation act, federal law, or federal regulation that require that a regulation be effective in 280 days or less from its enactment.*

As required by § 2.2-4011, please also describe the nature of the emergency and of the necessity for this regulatory change. In addition, delineate any potential issues that may need to be addressed as part of this regulatory change.

This action implements the statutory mandate (Chapter 428 of the 2019 General Assembly) to promulgate regulations for the issuance of temporary licenses to residents in counseling. The second enactment on HB2282 requires the Board to promulgate regulations within 280 days of enactment, so the Board adopted emergency regulations to comply with the mandate.

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 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.*
4. *To establish schedules for renewals of registration, certification, licensure, permit, and the issuance of a multistate licensure privilege.*
5. *To levy and collect fees for application processing, examination, registration, certification, permitting, or licensure or the issuance of a multistate licensure privilege and renewal that are sufficient to cover all expenses for the administration and operation of the Department of Health Professions, the Board of Health Professions, and the health regulatory boards.*
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 issuance of a temporary resident license counseling is found in Chapter 35 of Title 54.1:

§ 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:

1. *To cooperate with and maintain a close liaison with other professional boards and the community to ensure that regulatory systems stay abreast of community and professional needs.*
2. *To conduct inspections to ensure that licensees conduct their practices in a competent manner and in conformance with the relevant regulations.*
3. *To designate specialties within the profession.*
4. *To administer the certification of rehabilitation providers pursuant to Article 2 (§ [54.1-3510](#) et seq.) of this chapter, including prescribing fees for application processing, examinations, certification and certification renewal.*
5. *[Expired.]*
6. *To promulgate regulations for the qualifications, education, and experience for licensure of marriage and family therapists. The requirements for clinical membership in the American Association for Marriage and Family Therapy (AAMFT), and the professional examination service's national marriage and family therapy examination may be considered by the Board in the promulgation of these regulations. The educational credit hour, clinical experience hour, and clinical supervision hour requirements for marriage and family therapists shall not be less than the educational*

credit hour, clinical experience hour, and clinical supervision hour requirements for professional counselors.

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.

8. To maintain a registry of persons who meet the requirements for supervision of residents. The Board shall make the registry of approved supervisors available to persons seeking residence status.

9. To promulgate regulations for the registration of qualified mental health professionals, including qualifications, education, and experience necessary for such registration, and for the registration of persons receiving supervised training in order to qualify as a qualified mental health professional.

10. To promulgate regulations for the registration of peer recovery specialists who meet the qualifications, education, and experience requirements established by regulations of the Board of Behavioral Health and Developmental Services pursuant to § 37.2-203.

11. 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.

Purpose

Please describe the specific reasons why the agency has determined that this regulation is essential to protect the health, safety, or welfare of citizens. In addition, please explain any potential issues that may need to be addressed as the regulation is developed.

The purpose of this action is to ensure persons who are granted a temporary license for the purpose of completing a residency in counseling are qualified to provide mental health services to vulnerable individuals and groups. Qualifications for issuance of a resident license will ensure minimal competency to begin supervised practice, and requirements for renewal will ensure that residents have further knowledge of the ethics and standards of practice governing the behavioral health professions in order to protect health, safety, and welfare of the citizens they serve.



Substance

Please describe any changes that are proposed. Please outline new substantive provisions, all substantive changes to existing sections, or both where appropriate. Set forth the specific reasons the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of Virginians.

Current section number	Current requirement	Change, intent, rationale, and likely impact of new requirements
10	Sets out definitions for words and terms used in the chapter	<p>The term “residency” is amended because the Board will be licensing the resident rather than registering the residency.</p> <p>The term “resident” is amended to change Board approval to issuance of a temporary license. The word “submitted” is deleted because resident do not submit the contract; they do provide information about their supervisor, work site, and nature of services.</p> <p>The term “supervisory contract” is defined because it is used in the chapter; the definition clarifies the meaning of such a contract.</p>
20	Sets fees for the resident license in counseling	<p>Some fees in this section are rearranged for more logical order. The <u>new</u> fees are:</p> <p>Application and initial licensure for a resident - \$65 <i>This is the current fee for registration of supervision.</i></p> <p>Education only review - \$75 <i>The Board gets requests from potential applicants for a review of a person’s educational credentials to see whether they meet the qualifications for licensure. Currently, the only way that can be done is for him to submit an application for licensure (which includes many other requirements). This new fee would allow for 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.</i></p> <p>Annual renewal of a resident in counseling - \$30 <i>Amendments will eliminate the requirement for a resident to notify the board and pay a fee of \$30 every time he/she has a change or addition of supervisor or the work site for supervision. On average, a resident has 2 such changes each year and currently pays a \$30 fee for each.</i></p> <p>Late fee for renewal of a resident in counseling - \$10 <i>By policy, late fees are set at approximately 1/3 of the renewal fee.</i></p>

40	Sets the prerequisites for licensure by examination	There is an editorial change from “registration of supervision” to “board approval of a resident license.”
52	Establishes the requirements for a temporary license as a resident and for the residency itself	<p>In subsection A, the requirements for a temporary resident license are similar to those currently required for board approval to register a residency. The forms require verification of a supervisory contract, identification of the clinical supervisor and location of practice, and an attestation that he will be providing clinical services.</p> <p><i>Since, the Board will be granting a license, there are additional requirements for a report from NPDB and verification of any other jurisdiction in which the applicant may be licensed, certified, or registered that he does not have disciplinary action.</i></p> <p>In subsection B on the residency, there is a clarifying statement that a resident must meet the requirements of section 100 in order to maintain a current, active license.</p> <p>Currently, there are requirements relating to disclosure of information about a person in a residency to ensure the client knows that the resident is not licensed for independent practice and that he has a supervisor to whom he is responsible. Since the resident will now have a license number, that is included in the information that must be provided. Currently, the regulation says the client must be informed about the resident’s status, but it was unclear what that meant. To clarify, the amended rule says that the disclosure must include a statement that the resident does not have authority for independent practice and is under supervision.</p>
70	Sets the requirements for examination for licensure	<p>Subsection A is amended to specify that an applicant must pass the examination within six years of the date of initial issuance of a resident license.</p> <p><i>Current regulations require a residency to be completed within four years (or no less than 21 months). Current regulation also require an applicant to pass the examination within two years of approval to sit for the examination. If an applicant does not pass within that timeframe, he is allowed to reapply and must meet the requirements in effect at that time. Since a person must remain in a residency and practice under supervision until he has passed the examination (even if he has completed the 3,400 hours), and since the resident license is a “temporary” license, the Board has determined that six years should be more than ample time for an applicant to complete the residency and pass the examination. Residents are allowed to take the examination at any point during the residency, so they are encouraged to do so sooner rather than later.</i></p>
100	Sets the requirements for annual renewal of a resident license	<p>Subsection C is added to set the requirements for renewal to include:</p> <p>1) Renewal in the month of initial issuance and allowance to renew up to five times.</p> <p><i>Rather than establishing a set renewal date, which could give some applicants less than a full year of licensure,</i></p>

		<p><i>the Board will renew resident licenses of a rotating monthly basis. The limitation of five renewals is consistent with the nature of a <u>temporary</u> license and will prevent a person from becoming a permanent resident in counseling. The limitation of renewals is consistent with the timeframe for passage of the examination – so all requirements must be met within the six years one can remain in a residency.</i></p> <p>The Board has discussed the possibility of allowing reinstatement for a resident who has to take a break in the residency for good cause. That may be considered in the adoption of permanent regulation but is not necessary during the period when emergency regulations are in effect.</p> <p>2) On the annual renewal form, the resident will be required to attest that a supervisory contract is in effect with a board-approved supervisor for each of the locations at which he is currently providing clinical counseling services.</p> <p><i>Providing such information on an annual basis will be far less burdensome for residents who are currently required to notify the board each time there is an addition or change to their residency. It will also be less burdensome for staff who have to track that information.</i></p> <p>3) The resident will have to attest to completion of three hours of continuing education in ethics, standards of practice, or laws and regulations governing behavioral sciences.</p> <p><i>Supervisors often report that their biggest challenge is helping residents understand the standards of practice and the ethics of the profession. Continuing education in those areas is readily available and will enhance the supervised experience and improve the quality of licensees.</i></p>
	<p>Chapter 50 governs marriage and family therapists. The amendments to this chapter are identical to those for professional counseling in chapter 20.</p>	
	<p>Chapter 60 governs licensed substance abuse treatment practitioners. The amendments to this chapter are identical to those for professional counseling in chapter 20.</p>	

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 advantage of a resident license to the public is greater accountability and information about the residency; there are no disadvantages. There may be an advantage to residents and the licensees or organizations for whom they work under supervision in that some third-party payors may reimburse for their services as a “licensed” professional.
- 2) The primary advantage to the agency is greater awareness of any disciplinary history prior to issuance of a license. There are no disadvantages; fees are established with the intent of covering expenditures directly related to the licensing and discipline of persons with a resident license.
- 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 (§ 2.2-4000 et seq.) which are reasonable and necessary to administer effectively the regulatory system...*” The rules for issuance of a resident license are mandated by the Code and are intended to protect the public receiving such services. Therefore, the proposed amendments are a foreseeable result of the statute requiring the Board to protect the safety and health of the citizens of the Commonwealth.

Alternatives

Please describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. 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 regulatory change.

There are no alternatives to the regulatory change as promulgation of regulations was mandated by the General Assembly. The purpose of this action is the establishment of a temporary license for persons completing a residency in counseling. Amendments ensure that the public is aware of the residency status and that the license is, in fact, temporary rather than an on-going status.

Public Participation

Please indicate how the public should contact the agency to submit comments on this regulation, including ideas to assist the agency in the development of the regulation and the costs and benefits of the alternatives stated in this notice or other alternatives.

In addition to any other comments, the Board of Counseling is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the agency/board is seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments for the public comment file may do so by mail, email or fax to Elaine Yeatts at elaine.yeatts@dhp.virginia.gov or at 9960 Mayland Drive, Henrico, VA

23233 or by fax at (804) 527-4434.. Comments may also be submitted through the Public Forum feature of the Virginia Regulatory Town Hall web site at: <http://www.townhall.virginia.gov>. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

A public hearing will be held following the publication of this stage and notice of the hearing will be posted on the Virginia Regulatory Town Hall website (<http://www.townhall.virginia.gov>) and on the Commonwealth Calendar website (<https://www.virginia.gov/connect/commonwealth-calendar>). Both oral and written comments may be submitted at that time.