



Virginia
Regulatory
Town Hall

Notice of Intended Regulatory Action Agency Background Document

Agency Name:	Board of Counseling, Department of Health Professions
VAC Chapter Number:	18 VAC 115-20-10 et seq., 18 VAC 115-50-10 et seq., and 18 VAC 115-60-10 et seq.
Regulation Title:	Regulations Governing the Practice of Professional Counseling; Regulations Governing the Practice of Marriage and Family Therapist; Regulations Governing the Practice of Substance Treatment Practitioners
Action Title:	Continuing Competency Requirements
Date:	6/17/02

This information is required prior to the submission to the Registrar of Regulations of a Notice of Intended Regulatory Action (NOIRA) pursuant to the Administrative Process Act § 9-6.14:7.1 (B). Please refer to Executive Order Twenty-Five (98) and Executive Order Fifty-Eight (99) for more information.

Purpose

Please describe the subject matter and intent of the planned regulation. This description should include a brief explanation of the need for and the goals of the new or amended regulation.

In compliance with Senate Bill 53 enacted by the 2002 General Assembly, the Board intends to develop continuing competency requirements for licensure renewal, of professional counselors, marriage and family therapists, and licensed substance abuse treatment practitioners.

Basis

Please identify the state and/or federal source of legal authority to promulgate the contemplated regulation. The discussion of this authority should include a description of its scope and the extent to which the authority is mandatory or discretionary. The correlation between the proposed regulatory action and the legal authority identified above should be explained. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority must be provided.

Chapter 430 of the 2002 Acts of the Assembly adds section 54.1-3505.1 which mandates that the Board establish requirements for evidence of continued competency as a condition of renewal of license.

§ 54.1-3505.1. Continued competency requirements

The Board shall promulgate regulations establishing requirements for evidence of continued competency as a condition of renewal of a license under the provisions of this chapter. The Board may approve persons who provide or accredit continuing education programs in order to accomplish the purposes of this section. The Board shall have the authority to grant exemptions or waivers or to reduce the number of continuing education hours required in cases of certified illness or undue hardship.

The Board is authorized under § 54.1-103 to specify additional training or conditions for renewal of 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.*
- B. *The regulatory boards may enter into agreements with other jurisdictions for the recognition of certificates and licenses issued by other jurisdictions.*
- C. *The regulatory boards are authorized to promulgate regulations recognizing licenses or certificates issued by other states, the District of Columbia, or any territory or possession of the United States as full or partial fulfillment of qualifications for licensure or certification in the Commonwealth.*

Section 54.1-2400 establishes duties of health regulatory boards to establish necessary qualifications for registration, certification or licensure, to ensure the competence and integrity of regulated practitioners, to examine applicants, to establish renewal schedules, to administer fees to cover the administrative expenses of the regulatory program, to take disciplinary action for violations of law and regulations and to establish requirements for an inactive licensure status.

§ 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 and licensure.*
5. *To levy and collect fees for application processing, examination, registration, certification or licensure 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 (§ 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.*
7. *To revoke, suspend, restrict, or refuse to issue or renew a registration, certificate or license which such board has authority to issue for causes enumerated in applicable law and regulations.*
8. *To appoint designees from their membership or immediate staff to coordinate with the Intervention Program Committee and to implement, as is necessary, the provisions of Chapter 25.1 (§ [54.1-2515](#) et seq.) of this title. Each health regulatory board shall appoint one such designee.*
9. *To take appropriate disciplinary action for violations of applicable law and regulations.*
10. *To appoint a special conference committee, composed of not less than two members of a health regulatory board, to act in accordance with § [2.2-4019](#) upon receipt of information that a practitioner of the appropriate board may be subject to disciplinary action. The special conference committee may (i) exonerate the practitioner; (ii) reinstate the practitioner; (iii) place the practitioner on probation with such terms as it may deem appropriate; (iv) reprimand the practitioner; (v) modify a previous order; and (vi) impose a monetary penalty pursuant to § [54.1-2401](#). The order of the special conference committee shall become final thirty days after service of the order unless a written request to the board for a hearing is received within such time. If service of the decision to a party is accomplished by mail, three days shall be added to the thirty-day period. Upon receiving a timely written request for a hearing, the board or a panel of the board shall then proceed with a hearing as provided in § [2.2-4020](#), and the action of the committee shall be vacated. This subdivision shall not be construed to affect the authority or procedures of the Boards of Medicine and Nursing pursuant to §§ [54.1-2919](#) and [54.1-3010](#).*
11. *To convene, at their discretion, a panel consisting of at least five board members or, if a quorum of the board is less than five members, consisting of a quorum of the members to conduct formal proceedings pursuant to § [2.2-4020](#), decide the case, and issue a final agency case decision. Any decision rendered by majority vote of such panel shall have the same effect as if made by the full board and shall be subject to court review in accordance with the Administrative Process Act. No member who participates in an informal proceeding conducted in accordance with § [2.2-4019](#) shall serve on a panel conducting formal proceedings pursuant to § 2.2-4020 to consider the same matter.*
12. *To issue inactive licenses or certificates and promulgate regulations to carry out such purpose. Such regulations shall include, but not be limited to, the qualifications, renewal fees, and conditions for reactivation of licenses or certificates.*

The web site address for located the text of these statutes is <http://www.leg1.state.va.us>.

Substance

Please detail any changes that would be implemented: this discussion should include a summary of the proposed regulatory action where a new regulation is being promulgated; where existing provisions of a regulation are being amended, the statement should explain how the existing regulation will be changed. The statement should set forth the specific reasons the agency has determined that the proposed regulatory action would be essential to protect the health, safety or welfare of citizens. In addition, a statement delineating any potential issues that may need to be addressed as the regulation is developed shall be supplied.

By enacting the new legislation, the 2002 General Assembly determined that a requirement for continuing education is essential to protect the health, safety and welfare of the public who receive counseling services from licensed practitioners. In complying with the mandate to establish continuing education requirements, the Board must determine what types of education would be most meaningful for each of the licensure categories it governs, while considering the cost and availability of education to licensees in a wide variety of practice situations in both metropolitan and rural areas of the state.

The statute also authorizes the Board to approve and register providers of continuing education meeting certain criteria. Since the Board has only one administrative assistant dedicated to the licensure, certification and disciplinary processes of the Board, the Board will have to determine the optimal method for ensuring the credibility of providers and the quality of their programs without increasing the cost and administrative burden of operating the licensure program.

Alternatives

Please describe, to the extent known, the specific alternatives to the proposal that have been considered or will be considered to meet the essential purpose of the action.

As alternatives, the Board is reviewing the continuing education requirements of other state counseling boards and other boards regulating health professions in the Commonwealth. The Board is interested in a model that would allow some degree of self-determination by the practitioner along with some required content. In that the statute does not set an hour requirement, the Board has leeway in the number of hours that will be required per year. The Board also has the authority to grant exemptions or waivers or to reduce the number of continuing education hours required in cases of certified illness or undue hardship.

The Board has identified the need to establish a broad range of approved sources to accommodate practitioners in remote areas. These sources may include academic coursework, in-service training, seminars or workshops sponsored by universities, national professional organizations, and federal, state or local agencies or licensed health facilities and hospitals. The Board plans to develop criteria to provide for approval of programs offered by independent entities or individuals. The Board would like to establish criteria for courses that will allow maximum flexibility for licensees.

For administration of both program/activity approval and the monitoring of licensee compliance, alternatives being considered include the existing auditing process established in the Agency's Enforcement Division used by several other boards, outsourcing the work to a private vendor, forming a special advisory committee of licensees to do the work, and using standing committees of the Board. To avoid any conflict of interest, the Board is mindful of the need to ensure that any vendor approving programs is not itself a provider of continuing education.

Once approval to publish the Notice of Intended Regulatory Action is granted, the Board will consider any comment received during its meetings and public comment periods on any proposed regulations.

Family Impact Statement

Please provide a preliminary analysis of the potential impact of the proposed 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 proposed amendments will have no impact on the authority and rights of parents in the education, nurturing or supervision of their children. They may encourage self-pride for licensees who obtain additional training that they may not have otherwise pursued. The additional training may enhance the marital commitment for clients if a practitioner becomes more proficient in treating problems that may have been impacting the client's marriage. Disposable income of practitioners who are required to obtain the training will decrease depending on the type of training selected.