



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.
Regulation Title:	Regulations Governing the Practice of Professional Counselors
Action Title:	Portability of Licensure
Date:	October 1, 2004

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.

The Board intends to amend existing regulation regarding prerequisites for licensure by endorsement to allow for greater portability of licensure from state to state.

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.

§ 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.*

Section 54.1-3503 establishes the Board.

§ 54.1-3503. Board of Counseling.

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

The Board shall consist of fourteen members. Twelve shall be professionals licensed in Virginia, who shall represent the various specialties recognized in the profession, and two shall be citizen members. Of the twelve professional members, eight shall be professional counselors, two shall be marriage and family therapists, and two shall be licensed substance abuse treatment practitioners. The professional members of the Board shall include two full-time faculty members engaged in teaching counseling, substance abuse treatment or marriage and family therapy in an accredited college or university in this Commonwealth, and two professional counselors engaged in full-time private practice. However, the marriage and family therapists initially appointed to the Board shall not be required to be licensed, shall not be licensed by another board in the Department of Health Professions, and shall be clinical members of the American Association for Marriage and Family Therapy. The licensed substance abuse treatment practitioners initially appointed to the Board shall not be required to be licensed, shall not be licensed by another board in the Department of Health Professions, shall be active members of the Virginia Association of Alcoholism and Drug Abuse Counselors and shall have a master's degree in substance abuse or a substantially equivalent master's degree.

The terms of the members of the Board shall be four years.

Section 54.1-3505 authorizes the Board to regulate the practice of counseling.

§ 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.

Section 54.1-3506 mandates licensure for the practice of Counseling.

§ 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; however, no license shall be required for the practice of marriage and family therapy or the independent practice of substance abuse treatment until six months after the effective date of regulations governing marriage and family therapy and substance abuse treatment, respectively, promulgated by the Board under subdivisions 6 and 7 of § [54.1-3505](#). The Board may issue a license, without examination, for the practice of marriage and family therapy or the independent practice of substance abuse treatment to persons who hold a current and unrestricted license as a professional counselor within the Commonwealth and who meet the clinical and academic requirements for licensure as a marriage and family therapist or licensed substance abuse treatment practitioner, respectively. The applicant for such license shall present satisfactory evidence of qualifications equal to those required of applicants for licensure as marriage and family therapists or licensed substance abuse treatment practitioners, respectively, by examination in the Commonwealth.

Any person who renders substance abuse treatment services as defined in this chapter and who is not licensed to do so, other than a person who is exempt pursuant to § [54.1-3501](#), shall render such services only when he is (i) under the supervision and direction of a person licensed under this chapter who shall be responsible for the services performed by such unlicensed person, or (ii) in compliance with the regulations governing an organization or a facility licensed by the Department of Mental Health, Mental Retardation and Substance Abuse Services.

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.

The Board of Counseling allows licensure through endorsement, without re-examination, for applicants licensed in other states who meet educational and experience requirements substantially equivalent to those in effect in Virginia at the time of initial licensure. It is the goal of the Board to accept competent counselors rather than to exclude individuals based on arbitrary or unreasonable criteria.

The Board intends to amend Section 18 VAC 115-20-45 (Prerequisites for licensure by endorsement) to allow for the issuance of a license to any individual who qualifies for such a license pursuant to acceptance of professional credential by a nationally established entity such as the American Association of State Counseling Boards.

The Board has always attempted to mirror established regulations for a licensed profession in the development of new regulations for another licensed profession where possible; in this case the Board proposes to mirror regulation established by the Board of Psychology that allows for endorsement options within established parameters. Specifically, the Board of Psychology accepts credentials through Certificate of Professional Qualifications in Psychology (CPQ) of the Association of State and Provincial Psychology Boards (ASPPB). ASPPB issues a Certificate of Professional Quality in Psychology to psychologists licensed in the U. S. and Canada who meet the standards of educational preparation, supervised experience, and examination performance, and who have practiced a minimum of five years and have no history of disciplinary action.

By amending its regulation the Board would be able to participate in credentialing registries such as, the American Association of State Counseling Boards (AASCB) National Credentials Registry. The American Association of State Counseling Boards is the alliance of governmental agencies responsible for the licensure and certification of counselors throughout the United States.

The acceptance of credentials of licensed practitioner through nationally accepted professional registries provide an alternative verification of credentials of applicants for licensure through endorsement. Verification of education, supervised experience and examination by a national registry will better protect the public health, safety, and welfare of persons by allowing easier access to counselors licensed in other jurisdictions who wish to practice in Virginia.

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 an alternative, the Board considered developing language and establishing regulation consistent with standard reciprocity agreements between states. This alternative was not accepted because reciprocity agreements between states require considerable Board and staff time to negotiate agreements among states. Each time one of the compact states makes regulatory changes, educational and/or experience requirement changes, or any other change affecting the requirement(s) for licensure the reciprocity agreement must be re-negotiated.

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 regulatory action would neither strengthen nor erode the authority and rights of parents, encourage or discourage economic self-sufficiency, strengthen or erode the marital commitment or increase or decrease disposable family income.