



## **Economic Impact Analysis Virginia Department of Planning and Budget**

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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 Practice of Licensed Substance Abuse**

**Practitioners**

**Department of Health Professions**

February 6, 2009

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

The Board of Counseling (Board) proposes to amend its regulations governing the practices of professional counseling, marriage and family therapy and licensed substance abuse practitioners. Specifically, the Board proposes to clarify that experience required for licensure by endorsement in these fields must be post-licensure experience. The Board also proposes to require that all individuals licensed under these regulations must report incompetent or unprofessional behavior on the part of other individuals licensed under the same regulations (i.e., professional counselors will be required to report incompetent practice of other professional counselors).

### **Result of Analysis**

There is insufficient data to gauge whether benefits will likely outweigh costs for these proposed changes.

### **Estimated Economic Impact**

The Board recently promulgated standards for licensure by endorsement for professional counselors, marriage and family therapists and licensed substance abuse practitioners. Amongst these standards is a requirement that applicants for licensure by endorsement provide evidence of active clinical practice for five of the six years immediately preceding application for Virginia licensure. The Department of Health Professions (DHP) reports that the Board assumed it was understood that the clinical experience required would be experience post-licensure such that the

applicant had a “history of ethical, competent practice in another state on which to base a licensure decision in Virginia”. Since standards for licensure by endorsement became final (September 3, 2008), the Board has received an application from an individual who submitted evidence of pre-licensure experience (during internship or residency) to meet the Board’s requirements.

Since the Board did not originally specify that experience for this program must be post-licensure, it proposes to amend these regulations with that stipulation. DHP reports that the Board intends to allow pre-licensure experience to be counted toward meeting the requirements for licensure by endorsement until these proposed changes are promulgated. This proposed regulatory change will bring current regulations into line with the Board’s original intent. To the extent that independent, post-licensure experience is a better indicator of future competence of practice than would be supervised, pre-licensure experience, this proposed change may prove beneficial for the future patients of individuals licensed by endorsement. Individuals who have not been licensed for at least five years in another state, but who would meet experience requirements for licensure by endorsement if their pre-licensure experience were counted, will not be able to qualify for licensure by endorsement under these proposed standards. These individuals may incur costs if other avenues for Virginia licensure require more resources or if these individuals are required to wait (for perhaps several years) before being able to qualify for licensure by endorsement.

For many years the Board required licensed or certified professionals that were subject to its regulations to report incompetent or unlawful conduct by any other practitioner within the same profession and regulated by the same board. Several years ago, the Board changed this rule so that individuals licensed by the Board were required to report unprofessional or unlawful conduct for any mental health provider licensed by any health regulatory board. On advice of Board counsel, this provision was emended in 2007 to instead require these licensees to inform their patients of the patients’ right to report misconduct.

The Board now proposes to amend these regulations by reinserting old language that requires licensees to report incompetent or unlawful conduct by other practitioners within the same profession. This proposed change will make reporting requirements for the three professions covered by these regulations consistent with those of other Board regulants. DHP

reports that licensees covered by these regulations are likely not cognizant of the fact that that reporting requirements were inadvertently left out of these regulations when they were last amended. Accordingly, this proposed amendment may not have the affect of changing current licensee behavior. To the extent that some licensees may begin reporting misconduct that they formerly would not have, patients may be better protected from unprofessional or unlawful conduct on the part of their counselors/therapists. On the other hand, licensees will now be liable for reporting known or suspected misconduct and so may run afoul of the Board for not reporting bad conduct if the Board decides that conduct should have been reported.

### **Businesses and Entities Affected**

These proposed regulations will affect all individuals licensed by the Board of Counseling. DHP reported in 2007 that the Board then licensed 2,884 licensed professional counselors, 838 marriage and family therapists and 177 licensed substance abuse practitioners.

### **Localities Particularly Affected**

No locality will be particularly affected by this proposed regulatory action.

### **Projected Impact on Employment**

If this regulatory action leads to a smaller number of individuals being licensed by endorsement, there may end up being marginally fewer professionals in these fields practicing in the Commonwealth than there would be under current regulations.

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

This regulatory action will likely have no effect on the use or value of private property in the Commonwealth.

### **Small Businesses: Costs and Other Effects**

Small businesses in the Commonwealth are unlikely to incur any costs on account of this regulatory action.

### **Small Businesses: Alternative Method that Minimizes Adverse Impact**

Small businesses in the Commonwealth are unlikely to incur any costs on account of this regulatory action.

## **Real Estate Development Costs**

This regulatory action will likely have no effect on real estate development costs in the Commonwealth.

## **Legal Mandate**

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with Section 2.2-4007.H of the Administrative Process Act and Executive Order Number 36 (06). Section 2.2-4007.H requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, Section 2.2-4007.H requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.