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## Proposed Regulation Agency Background Document

<b>Agency name</b>	Board of Counseling, Department of Health Professions
<b>Virginia Administrative Code (VAC) citation(s)</b>	18VAC115-20 18VAC115-50 18VAC115-60
<b>Regulation title(s)</b>	Regulations Governing the Practice of Professional Counseling Regulations Governing the Practice of Marriage and Family Therapy Regulations Governing the Licensure of Substance Abuse Professionals
<b>Action title</b>	Credentials evaluation service for foreign graduates
<b>Date this document prepared</b>	11/6/18

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 VAC7-10), 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 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. If applicable, generally describe the existing regulation.*

The goal of the regulatory action to provide a pathway for foreign-trained graduates in counseling to obtain licensure as a professional counselor, marriage and family therapist, or a substance abuse treatment practitioner in Virginia. The Board adopted language similar to psychology, which provides that graduates of programs that are not within the United States or Canada can qualify for licensure if they can provide documentation from an acceptable credential evaluation service that allows the board to determine if the program meets the requirements set forth in the regulation.

## 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.*

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N/A

## Mandate and Impetus

*Please identify the mandate for this regulatory change, and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, board decision, etc.). For purposes of executive branch review, “mandate” has the same meaning as defined in Executive Order 14 (as amended, July 16, 2018), “a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part.”*

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This regulatory action was initiated and recommended by the Regulatory Committee of the Board after staff identified the issue. It is consistent with Governor Northam’s Executive Order 14 (2018), which states that: “All regulatory activity should be undertaken with the least possible intrusion into the lives of the citizens of the Commonwealth and be necessary to protect the public health, safety, and welfare.”

## 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.*

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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.

...

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 regulation of the profession of counseling is found in Chapter 35 of Title 54.1:

**§ 54.1-3503. Board of Counseling.**

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

**§ 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.*

**Purpose**

*Please explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it's intended to solve.*

The proposed regulatory action will allow persons who graduated from foreign educational programs in counseling to qualify for licensure by providing documentation from a credentialing service of the equivalency of the foreign education and experience to that required of U.S. trained applicants. To the extent some applicants may be able to qualify for licensure, the public may benefit from an increased supply of mental health providers. Such credentialing services already evaluate the qualifications of other health and mental health providers, so there is assurance of minimal competency to practice counseling safely for the health and welfare of clients.

**Substance**

*Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of Changes" section below.*

Section 49 of Chapter 115-20 sets out the degree program requirements for licensure as a professional counseling, with which graduates of foreign programs cannot comply. Section 51 also sets out the coursework requirements that must be met. Foreign-trained graduates find it

very difficult to meet those requirements because board staff does not have adequate information to review credentials from a foreign country. Consequently, the amendment would add language similar to psychology, which provides that graduates of programs that are not within the United States or Canada can qualify for licensure if they can provide documentation from an acceptable credential evaluation service that allows the board to determine if the program meets the requirements set forth in the regulation.

There are similar provisions in section 50 of Chapter 115-50 for marriage and family therapists and in section 60 of Chapter 115-60 for substance abuse treatment practitioners.

### 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) There are no advantages or disadvantages to the public; the amendments will benefit a small number of applicants who are now unable to be initially licensed in Virginia.
- 2) There are no advantages or disadvantages to the agency or the Commonwealth, other than the amendment may facilitate licensure for a small number of counselors who can provide mental health services in the Commonwealth.
- 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 “*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.*” There is no restraint on competition as a result of promulgating this regulation, which is less restrictive for applicants.

### Requirements More Restrictive than Federal

*Please identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements, or no requirements that exceed applicable federal requirements, include a specific statement to that effect.*

There is no applicable federal requirement.

### Agencies, Localities, and Other Entities Particularly Affected

*Please identify any other state agencies, localities, or other entities particularly affected by the regulatory change. “Particularly affected” are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. “Locality” can refer to*

*either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.*

Other State Agencies Particularly Affected - None

Localities Particularly Affected - None

Other Entities Particularly Affected - None

**Economic Impact**

*Pursuant to § 2.2-4007.04 of the Code of Virginia, please identify all specific economic impacts (costs and/or benefits), anticipated to result from the regulatory change. When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Please keep in mind that this is change versus the status quo.*

**Impact on State Agencies**

<i>For your agency:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including: a) fund source / fund detail; b) delineation of one-time versus on-going expenditures; and c) whether any costs or revenue loss can be absorbed within existing resources	As a special fund agency, the Board must generate sufficient revenue to cover its expenditures from non-general funds, specifically the renewal and application fees it charges to practitioners or entities for necessary functions of regulation. All notifications will be done electronically. There are no on-going expenditures
<i>For other state agencies:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures.	No impact
<i>For all agencies:</i> Benefits the regulatory change is designed to produce.	No impact

**Impact on Localities**

Projected costs, savings, fees or revenues resulting from the regulatory change.	None
Benefits the regulatory change is designed to produce.	None

**Impact on Other Entities**

Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect.	Applicants with educational credentials from outside the United States
Agency's best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses	There is no estimate of the number affected but it is expected to be very small – likely 10 to 20 per year.

<p>affected. Small business means a business entity, including its affiliates, that:  a) is independently owned and operated and;  b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	
<p>All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Please be specific and include all costs including, but not limited to:  a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses;  b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change;  c) fees;  d) purchases of equipment or services; and  e) time required to comply with the requirements.</p>	<p>The Board accepts credentialing evaluations from more than one source, but a service that applicants in Psychology often use is World Educational Services. For a fee of \$85, WES will include an analysis, equivalency, certification and notarization, and mailing to one address. A fee of \$149 includes a course-by-course analysis, equivalency, credit &amp; GPA calculation, courses studied, certification and notarization, and mailing to one address.</p> <p>The Board may find it necessary to require the course-by-course evaluation to determine equivalency with coursework requirements for educational programs.</p>
<p>Benefits the regulatory change is designed to produce.</p>	<p>Will provide a pathway to licensure that currently does not exist for persons educated outside the United States.</p>

### 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.*

Since the current regulation requires graduation from a college or university accredited by a regional accrediting agency, there is no alternative or pathway to licensure for graduates of educational programs outside the U.S. Amendment to regulation is the least burdensome alternative that meets the essential purpose of the change.

### Regulatory Flexibility Analysis

*Pursuant to § 2.2-4007.1B of the Code of Virginia, please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the regulatory change.*

There is no alternative to adoption of a less stringent and less burdensome requirement for initial licensure under the Board of Counseling, other than the promulgation of amended regulations.

**Public Comment**

*Please summarize all comments received during the public comment period following the publication of the previous stage, and provide the agency response. Ensure to include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency or board. If no comment was received, enter a specific statement to that effect.*

The Notice of Intended Regulatory Action was published on September 17, 2018 with a 30-day comment period until October 17, 2018. There were no comments.

**Public Participation**

*Please include a statement that in addition to any other comments on the regulatory change, the agency is seeking comments on the costs and benefits of the regulatory change and the impacts of the regulated community. Also, indicate whether a public hearing will be held to receive comments.*

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](mailto: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.

**Detail of Changes**

Current section number	Current requirement	Change, intent, rationale, and likely impact of new requirements
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<p>Chapter 20 Section 49</p>	<p>Sets out the degree requirements for a program preparing individuals to practice counseling</p>	<p>Subsection C is added to specify that graduates of programs that are not within the United States or Canada must provide documentation from an acceptable credential evaluation service which provides information that allows the board to determine if the program meets the requirements set forth in this chapter.</p> <p><i>Currently, regulations require a graduate degree from a program that prepares individuals to practice counseling offered by a "college or university accredited by a regional accrediting agency." There are additional criteria for an approved degree. Section 10 defines a "regional accrediting agency" as one of the regional accreditation agencies recognized by the U.S. Secretary of Education responsible for accrediting senior postsecondary institutions.</i></p> <p><i>Since degree programs in foreign countries are not regionally accredited, graduates of such programs find it impossible to be initially licensed in Virginia. If they are licensed in another state and have at least 24 out of the past 60 months of active clinical practice without discipline, they may qualify for licensure by endorsement. However, this regulatory change will result in additional persons qualifying for initial licensure in Virginia.</i></p>
<p>Chapter 50, Section 50</p>	<p>Sets out the degree requirements for a program preparing individuals to practice marriage and family therapy</p>	<p>Same as above for marriage and family therapist licensure.</p>
<p>Chapter 60, Section 60</p>	<p>Sets out the degree requirements for a program preparing individuals to practice substance abuse treatment</p>	<p>Same as above for substance abuse treatment practitioner licensure.</p>