



Proposed Regulation Agency Background Document

Agency name	Board of Counseling, Department of Health Professions
Virginia Administrative Code (VAC) citation	18 VAC 115-50-10 et seq.
Regulation title	Regulations Governing the Practice of Marriage and Family Therapy
Action title	Supervision of residency and requirement for examination for licensure
Document preparation date	8/23/07

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

In a short paragraph, please summarize all substantive changes that are being proposed in this regulatory action.

The requirements for a residency in marriage and family therapy are amended to specify that at least 100 of the required 200 hours of face-to-face supervision must be provided by a person holding a license as a marriage and family therapist. The requirements for licensure by endorsement are amended to repeal the provision that allows a person holding a license as a licensed professional counselor to be licensed by endorsement without taking and passing the national examination in marriage and family therapy.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

Regulations are promulgated under the general authority of Chapter 24 of Title 54.1 of the Code of Virginia. Section 54.1-2400 (6) 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:

...
 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. ...*

The specific authorization to promulgate regulations establishing the qualifications for licensure as a marriage and family therapist is found in the following section:

§ 54.1-3505. Specific powers and duties of the Board.

“...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.”

Purpose

Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal and the problems the proposal is intended to solve.

The purpose of the action to amend regulations for the licensure of marriage and family therapists to require that at least 100 of the 200 hours of clinical supervision in a residency be provided by a licensed marriage and family therapist and to repeal the provision that allows a person holding a license as a professional counselor to be granted a license as a marriage and family therapist without further examination. The action is in response to a petition for rule-making submitted by Dr. Arnold Woodruff, President of the Virginia Association for Marriage and Family Therapy. It was strongly supported by comment to the Board from licensed MFT’s and others.

The purpose of the action is to ensure that persons who hold the marriage and family therapy license are specifically trained, experienced and tested in the unique theories and modalities for addressing the needs of their clients. While other mental health professionals can and do treat

individuals and families, public health and safety is protected by assurance that a person who hold a license as a marriage and family therapist is appropriately qualified in the specific application of theory and technique.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (More detail about these changes is requested in the "Detail of changes" section.)

Section 60 of 18VAC115-50, which sets out the requirements for a residency in marriage and family therapy, is amended to specify that at least 100 of the required 200 hours of face-to-face supervision be provided by a person holding a license as a marriage and family therapist. The requirement would be similar to that for licensed professional counselors and would include a provision to allow the Board to consider special requests in the event that the regulations create an undue burden in regard to geography or disability which limits the resident's access to qualified supervision.

In addition, section 40 is amended to repeal 3 b, which allows a person holding a license as a licensed professional counselor to be licensed by endorsement without taking and passing the national examination in marriage and family therapy. Both changes would provide the consumer of mental health services with greater assurance about the training and competency of the practitioner who holds a license to provide marriage and family therapy.

Issues

Please identify the issues associated with the proposed regulatory action, 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 the regulatory action poses no disadvantages to the public or the Commonwealth, please so indicate.

1) The primary advantage to the public would be the assurance that persons who hold a license as a marriage and family therapist have had appropriate supervision in their residencies and have been tested on a national standard in the systemic theories and application relative to marriage and family therapy. There are no disadvantages to consumers of mental health services; persons who hold a license as a professional counselor will continue to be authorized to provide marriage and family counseling, and residents who have difficulty finding a licensed MFT to provide one-half of the required supervision will be able to request a hardship waiver.

2) There are no disadvantages to the agency or the Commonwealth. By specifying requirements for a supervisor, there will be less ambiguity in the regulation, which may encourage compliance.

3) There are no other matters of interest.

Economic impact

Please identify the anticipated economic impact of the proposed regulation.

<p>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures</p>	<p>a) 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 for necessary functions of regulation; b) The agency will incur some one-time costs (less than \$1,000) for mailings to the Public Participation Guidelines mailing lists, conducting a public hearing, and sending notice of final regulations to regulated entities. Since most mailings to the PPG list are handled electronically, there is very little cost involved. Every effort will be made to incorporate those into anticipated mailings and Board meetings already scheduled. There are no on-going costs to the agency.</p>
<p>Projected cost of the regulation on localities</p>	<p>None</p>
<p>Description of the individuals, businesses or other entities likely to be affected by the regulation</p>	<p>The individuals likely to be affected would be residents in marriage and family therapy or substance abuse treatment, the persons who will be providing supervision for those residents, and licensed professional counselors who want to obtain an additional license as a marriage and family therapist. The proposed regulations do not affect the license or practice of any persons currently licensed by the Board or any person currently serving a residency.</p>
<p>Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>There is no estimate of the number of persons who would be affected.</p>
<p>All projected costs of the regulation for affected individuals, businesses, or other entities. Please be specific. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses.</p>	<p>The only cost would be \$224 to take the national examination for a licensed professional counselor who wants to obtain an additional license as a marriage and family therapist.</p>

Alternatives

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

When the marriage and family therapist license was first established in the Code and regulations became effective in 1997, it was necessary to allow supervision of a residency to be provided by licensed professional counselors and other mental health professionals, since there were no licensed MFT's in Virginia. At that time, the Board also determined that professional counselors who had also had training and education in marriage and family therapy should be able to "endorse in" and obtain the MFT license without further examination.

In the intervening 10 years, the number of licensed MFT's has grown to 828 in Virginia, so the rationale behind regulation in 1997 no longer exists. According to professional counselors and marriage and family therapists who sit on the Board, there is a growing distinction among the disciplines in counseling, evidenced by differences in educational focus and training. There are distinctive differences in the therapy paradigm and systemic differences in theory and application of theory with respect to marriage and family systems. The distinctiveness is important enough to justify the need for half of the personal supervision to be provided by someone with a marriage and family license and for passage of a national examination that tests one's knowledge in the theories of marriage and family therapy.

With changes in the regulation, only half of the 200 hours of supervision would have to be provided by a licensed MFT, while the other half could be given by a professional counselor or other mental health practitioner. In addition, there would be a waiver provision by which a resident who had difficulty working out a supervisory relationship with a MFT could seek an exception to the rule. While a person seeking to be licensed as a MFT would have to pass the national examination in marriage and family therapy, a licensed professional counselor, licensed social worker, or other mental health professional could continue to provide marriage or family counseling, but could not hold themselves out to the public as being licensed as a marriage and family therapist without minimal competency evidenced by passage of a national examination.

Public comment

Please summarize all comments received during public comment period following the publication of the NOIRA, and provide the agency response.

In response to the petition for rulemaking from the President of the Virginia Association for Marriage and Family Therapy, there were 11 comments in support of and one comment in opposition to the actions requested in the petition. The Notice of Intended Regulatory Action was published in the Register on June 11, 2007 and sent to the Public Participation Guidelines list with comment requested until July 11, 2007. There was no public comment received on the NOIRA.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability.

The proposed regulatory action may strengthen the institution of the family and family stability by ensuring that persons licensed as marriage and family therapists have been appropriately trained and examined.

Detail of changes

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.

Current section number	Proposed new section number	Current requirement	Proposed change and rationale
40	n/a	Allows licensure as a professional counselor to be licensed by endorsement as a marriage & family therapist without passage of the national examination	Would restrict licensure by endorsement to persons who hold a MFT license in another state. Persons holding a LPC or other behavioral health license in Virginia could still obtain a MFT license by completing educational requirements set forth in current regulations and passage of the national examination in marriage and family therapy.
60	n/a	Requires supervision of a resident to be provided by a person licensed in a mental health discipline	<p>Would require that at least one-half of the face-to-face supervision (100 hours) be provided by a licensed marriage and family therapist.</p> <p><i>The rationale for both changes is that marriage and family therapy is now recognized as a separate discipline in counseling education, requiring understanding and mastery of unique theories and techniques. When the MFT license was new (1997), it was necessary to allow persons with other mental health licenses to provide supervision for a resident in marriage and family therapy. Ten years later, with 785 licensed MFT's, availability of MFT supervision for half of the face-to-face supervision should not be a concern. Likewise, it is no longer appropriate to allow a professional counselor who has not taken the examination testing knowledge and ability as a marriage and family therapist to hold such a license by endorsement.</i></p> <p><i>Educators and practitioners who are knowledgeable about the practice of marriage and family therapy believe that there are significant enough differences in paradigms to justify the need for some supervision by a licensed marriage and family therapist and for the passage of the national examination.</i></p>

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