



Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Board of Counseling, Department of Health Professions
Virginia Administrative Code (VAC) citation	18VAC115-20-10 et seq.
Regulation title	Regulations Governing the Practice of Professional Counseling
Action title	Accreditation of educational programs
Date this document prepared	9/29/14

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

In response to a petition for rulemaking, the Board is publishing a Notice of Intended Regulatory Action to add a requirement for all counseling programs leading to a license as a professional counselor to be clinically-focused and accredited by the Council for Accreditation of Counseling and Related Educational Programs (CACREP) or an approved affiliate, such as the Council on Rehabilitation Education (CORE). This would be a phased-in requirement, allowing seven years from the effective date for students to complete their education in a non-CACREP program and for programs to achieve accreditation standards.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person's overall regulatory authority.

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. ...

Need

Please detail the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, delineate any potential issues that may need to be addressed as the regulation is developed.

The Board decided to publish a Notice of Intended Regulatory Action in response to a petition for rulemaking to provide a clearer standard for students, greater consistency in approval of residencies by the Board, portability of educational qualification for Virginia graduates, and for acceptance of practice by federal agencies.

In recent years, the Board of Counseling has worked towards greater professional identity for counseling to help the public understand the clinical services a licensed professional counselor is qualified to provide. Legislation passed in 2013 (HB1666) amended the definition of “counseling” and “professional counselor” to clarify professional identity and distinguish the profession from others that include the methodology of “counseling” in their scope of practice. However, the Board continues to review applications for licensure from students whose educational programs are not clearly “counseling” in their identity. The lack of clarity in its regulations has been frustrating for the Board and very problematic for some applicants who

have obtained a post-graduate degree that may or may not qualify them for a residency and ultimately licensure.

CACREP was established in 1981 to achieve some consistency in counseling educational programs. It has been recognized by the Council for Higher Education Accreditation, a national advocate and institutional voice for self-regulation of academic quality through accreditation. CHEA is an association of 3,000 degree-granting colleges and universities and recognizes 60 institutional and programmatic accrediting organizations. CHEA recognition provides assurance to the public and higher education institutions that CACREP is a legitimate accrediting body with authority granted by a regulating body who has reviewed the standards, processes, and policies of CACREP. CHEA recognition also assures the public that the programs that achieve CACREP accreditation are legitimate degree programs. Both CHEA and CACREP assist the public in avoiding spending money on illegitimate degrees promoted by degree mills and accreditation mills. One of the goals of CACREP is to establish a uniform set of educational requirements across the United States to facilitate portability of licensure from state to state.

Three federal agencies have made graduation from a CACREP accredited program a requirement for independent practice in counseling. The Department of Veterans Affairs (VA) released qualification standards that formally recognize licensed professional mental health counselors who have graduated from CACREP accredited programs as mental health specialists within the Veterans Health Administration. The Department of Defense will require a CACREP accredited Clinical Mental Health Counseling or Mental Health Counseling degree in order to obtain the TRICARE Certified Mental Health Counselor credential, which grants the authority to provide independent care to TRICARE beneficiaries after December 31, 2016. Prior to this legislation, mental health counselors could not practice independently in the TRICARE system. Beginning in July 2011, only licensed professional counselors with a degree from a CACREP accredited program can be employed as Fully Functioning Army Substance Abuse Program Practitioner. With a large military presence in Virginia, there is a need to equate graduation from a CACREP-accredited program with licensure to avoid public confusion and give licensees access to federal agencies.

The primary issue raised with requiring CACREP accreditation is the concept of granting a “monopoly” for one accrediting body over which the Board has no direct control. The Board of Counseling has found that it has neither the resources nor the expertise to examine counseling programs across the country to assess the quality of the education in that program. The reliance on an independent, national accrediting body is common for all health and mental health licensure in Virginia and other states. For example, the Board of Medicine recognizes the American Medical Association’s Liaison Committee on Medical Education or the Committee for the Accreditation of Canadian Medical Schools or any other organization approved by the board. The Board of Social Work recognizes the Council on Social Work Education as the accrediting body for educational programs. Other boards have similar criteria for accreditation.

According to the petitioner, there are 12 Virginia institutions that already have CACREP accreditation and several others are working towards accreditation. Consistency and quality in educational preparation for professional counselors will provide greater assurance to clients

seeking their services that they have been adequately prepared and appropriately licensed to protect public health and safety.

Substance

Please detail any changes that will be proposed. Be sure to define all acronyms. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed.

Section 49 would be amended to require for licensure as a professional counselor, graduation from a clinically-focused counselor preparation program accredited by the Council for Accreditation of Counseling and Related Educational Programs (CACREP) or an approved affiliate such as the Council on Rehabilitation Education (CORE). Clinically-focused, as defined, would refer to a degree in Clinical Mental Health Counseling; Marriage, Couple, and Family Counseling; Addictions Counseling; and Clinical Rehabilitation Counseling. There would be a seven-year “grandfathering” clause to allow students to complete their education and residency and to allow time for any remaining non-CACREP programs to achieve accreditation. Additionally, the Board would likely specify CACREP or any accrediting body recognized by the Board in the event a comparable accrediting body develops in the coming years.

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also, please describe the process by which the agency has considered or will consider other alternatives for achieving the need in the most cost-effective manner.

The Board of Counseling has recognized CACREP programs as meeting its criteria for educational institutions, but has not required CACREP accreditation. To do so requires an amendment to its regulations. There are no other alternatives for achieving the purpose of this action.

Public participation

The agency is seeking comments on this regulatory action, including but not limited to 1) ideas to be considered in the development of this proposal, 2) the costs and benefits of the alternatives stated in this background document or other alternatives and 3) potential impacts of the regulation. The agency is also 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) the probable effect of the regulation on affected small businesses, and 3) the description of less intrusive or costly alternatives for achieving the purpose of the regulation.

The Board will use its Regulation Committee to develop proposed regulations; a regulatory advisory panel will not be appointed to assist in the development of the proposed regulation.

Anyone wishing to submit comments may do so via the Regulatory Town Hall website (<http://www.townhall.virginia.gov>), or by mail, email, or fax to Elaine Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 9960 Mayland Drive, Henrico, VA 23233; elaine.yeatts@dhp.virginia.gov; 804-527-4434. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by midnight on the last day of the public comment period.

A public hearing will be held following the publication of the proposed stage of this regulatory action 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 (<http://www.virginia.gov/cmsportal3/cgi-bin/calendar.cgi>). Both oral and written comments may be submitted at that time.

Family impact

Assess 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.

There is no impact on the family and family stability.