

PRELIMINARY DETERMINATION

NOTICE OF INTENDED REGULATORY ACTION

BOARD OF LICENSED PROFESSIONAL COUNSELORS, MARRIAGE AND FAMILY THERAPISTS AND SUBSTANCE ABUSE PROFESSIONALS

DEPARTMENT OF HEALTH PROFESSIONS

ITEM 1: SPECIFIC REASON FOR PROPOSED REGULATION

By action of the 1997 General Assembly in the passage of Chapter 901, licensure for Substance Abuse Treatment Professionals in the private sector was established. Persons engaged in the independent practice of substance abuse treatment are required to hold a license to practice six months after the effective date of regulations promulgated by the Board.

In order to establish standards of practice, set qualifications for licensure, collect fees, and take disciplinary action for violations of law and regulation as required by § 54.1-2400, the Board must initiate the regulatory process to amend 18 VAC 115-30-10 et seq.

ITEM 2: LEGAL AUTHORITY FOR REGULATION

§ 54.1-2400 provides statutory authority for the Board to promulgate regulations that establish qualifications for licensure, collect fees and take disciplinary action against regulated entities.

§ 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 (§ 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.

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 § 9-6.14:11 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 § 9-6.14:12, 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 § 9-6.14:12, 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 § 9-6.14:11 shall serve on a panel conducting formal proceedings pursuant to § 9-6.14:12 to consider the same matter.

Chapter 901 of the 1997 General Assembly changed the name of the Board to the Board of *Licensed Professional Counselors, Marriage and Family Therapists, and Substance Abuse Professionals*, mandated licensure for the independent practice of substance abuse treatment, and mandated that the Board promulgate regulations for licensure. As of July 1, 1997, the following additions to Chapter 35 of the Code of Virginia are in effect:

CHAPTER 35
PROFESSIONAL COUNSELING, MARRIAGE AND FAMILY THERAPY AND
SUBSTANCE ABUSE TREATMENT

§ 54.1-3500 Definitions

"Board" means the Board of *Licensed* Professional Counselors, Marriage and Family Therapists, *and Substance Abuse Professionals*.

"Licensed substance abuse practitioner" means a person who: (i) is trained in and engages in the practice of substance abuse treatment with individuals or groups of individuals suffering from the effects of substance abuse or dependence, and i the prevention of substance abuse or dependence; and (ii) is licensed to provide advanced substance abuse treatment and independent, direct and unsupervised treatment to such individuals or groups of individuals, and to plan, evaluate, supervise and direct substance abuse treatment provided by others."

"Practice of substance abuse treatment" means rendering or offering to render substance abuse treatment to individuals, groups organizations, or the general public."

"Substance abuse" and "substance dependence" mean a maladaptive pattern of substance use leading to clinically significant impairment or distress.

"Substance abuse treatment" means (i) the application of specific knowledge, skills, substance abuse treatment theory and substance abuse treatment techniques to define goals and develop a treatment plan of action regarding substance abuse or dependence prevention, education or treatment in the substance abuse or dependence recovery process and (ii) referrals to medical, social services, psychological, psychiatric or legal resources when such referrals are indicated.

§54.1-3501. Exemption from requirements for licensure.

1. Persons who render services that are like or similar to those falling within the scope of the classifications or categories in this chapter, *including persons acting as members of substance abuse self-help groups*, so long as the recipients or beneficiaries of such services are not subject to any charge or fee, or any financial requirement, actual or implied, and the person rendering such service is not held out, by himself or otherwise, as a person licensed under this chapter.

2. The activities or services of a student pursuing a course of study in counseling, *substance abuse treatment* or marriage and family therapy in an institution accredited by an accrediting agency recognized by the Board or under the supervision of a person licensed or certified under this chapter, if such activities or services constitute a part of the student's course of study and are adequately supervised.

3. The activities, including marriage and family therapy, counseling, or *substance abuse treatment*, of rabbis, priests, ministers or clergymen of any religious denomination or sect when such activities are within the scope of the performance of their regular or specialized ministerial duties, and no separate charge is made or when such activities are performed, whether with or without charge, for or under auspices or sponsorship, individually or in conjunction with others, of an established and legally cognizable church, denomination or sect, and the person rendering service remains accountable to its established authority.

6. Persons regulated by this Board as professional counselors or persons regulated by another board within the Department of Health Professions who provide, within the scope of their practice, marriage and family therapy, counseling *or substance abuse treatment* to individuals or groups.

§ 54.1-3503. Board of *Licensed* Professional Counselors, Marriage and Family Therapists and Substance Abuse Treatment Professionals.

The Board of *Licensed* Professional Counselors, Marriage and Family Therapists, *and Substance Abuse Treatment Professionals* 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.

§ 54.1-3504. Nominations.

Nominations for professional members may be made from a list of at least three names for each vacancy submitted to the Governor by the Virginia Counselors Association, the Virginia Association of Clinical Counselors, the *Virginia Association of Alcoholism and Drug Abuse Counselors*, and the Virginia Association for Marriage and Family Therapy. The Governor may notify such organizations of any professional vacancy other than by expiration. In no case shall the Governor be bound to make any appointment from among the nominees.

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

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. The requirements for membership in the National Association of Alcoholism and Drug Abuse Counselors and its national 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 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.

§ 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 *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 therapist *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.

§ 54.1-3507. Scope of practice of and qualifications for licensed substance abuse treatment practitioners.

A. A licensed substance abuse treatment practitioner shall be qualified to (i) perform on an independent basis the substance abuse treatment functions of screening, intake, orientation, assessment, treatment planning, treatment, case management, substance abuse or dependence crisis intervention, client education, referral activities, recordkeeping, and consultation with other professionals; (ii) exercise independent professional judgment, based on observations and objective assessments of a client's behavior, to evaluate current functioning, to diagnose and select appropriate remedial treatment for identified problems, and to make appropriate referrals; and (iii) supervise, direct and instruct others who provide substance abuse treatment.

B. Pursuant to regulations adopted by the Board, an applicant for a license as a licensed substance abuse treatment practitioner shall submit evidence satisfactory to the Board that the applicant has (i) completed a specified number of hours of graduate studies, including a specified number of didactic substance abuse education courses at, and has received a master's degree in substance abuse or a substantially equivalent master's degree from, a college or university accredited by an accrediting agency recognized by the Board; and (ii) completed a specified number of hours of experience involving the practice of substance abuse treatment supervised by a licensed substance abuse treatment practitioner, or by another person with substantially equivalent education, training and experience. The applicant shall also pass an examination, as required by the Board.

§ 54.1-3508. Licensure of certain persons possessing substantially equivalent qualifications, education or experience.

Notwithstanding the provisions of § 54.1-3507, the Board may issue a license as a licensed substance abuse treatment practitioner to a person who, after the effective date of the regulations promulgated pursuant to subdivision 7 of § 54.1-3505, has applied for such a license and who, in the judgment of the Board, possesses qualifications, education or experience substantially equivalent to the requirements of § 54.1-3507; however, any such applicant shall have completed at least one year of supervised clinical experience in substance abuse treatment.

ITEM 3: REASONING FOR CONTEMPLATED REGULATION

The 1997 General Assembly mandated that the Board of Licensed Professional Counselors, Marriage and Family Therapists and Substance Abuse Professionals regulate the independent practice of substance abuse treatment. In the development of regulations, the Board will consider requirements for substance abuse treatment practitioner licensure

in other states, as well as the requirements for membership in the National Association of Alcoholism and Drug Abuse Counselors. The Board will also hold public hearings and consider public comment in process of developing the regulations. Educational credit hour, clinical experience hour, and clinical supervision hour requirements shall not be less than those required in the Board's other regulations for licensed mental health professionals, as mandated under § 54.1-3505.

It is the initial intent of the Board to amend current regulations for substance abuse counselors (18 VAC 115-30-10 et. seq.) to provide for licensure requirements pursuant to the 1997 legislation. It will be necessary to change the name of the regulations to *Regulations Governing the Practice of Substance Abuse Treatment*. However, if it becomes apparent that the amended regulations would be too cumbersome or difficult to follow, the Board will consider the option of adopting a separate set of regulations for licensed practitioners.

ITEM 4: ALTERNATIVES TO REGULATION

§ 54.1-3505 mandates that the Board of Licensed Professional Counselors, Marriage and Family Therapists and Substance Abuse Professionals promulgate regulations for the qualifications, education, and experience for licensed substance abuse treatment and provides for consideration by the Board of the requirements for membership in the National Association of Alcoholism and Drug Abuse Counselors and that organization's examination. Section 54.1-3506 also provides for licensure by endorsement to those licensed professional counselors within the Commonwealth who present satisfactory evidence of qualifications equal to those required of applicants for licensure as substance abuse treatment practitioners by examination in the Commonwealth.

The Board will establish reasonable fees based on cost projections for approximately 500 licensed substance abuse treatment practitioners in accordance with § 54.1-113.

To protect patients from harm, the Board will also establish standards of ethics and grounds for disciplinary action, which will enable the Board to evaluate complaints received against licensed substance abuse treatment practitioners and to determine the least burdensome action to achieve adequate protection for the public. Regulations will not adversely affect the practice of licensed individuals who are already providing substance abuse treatment within the scope of their practice, as § 54.1-3501(6) of the amended legislation exempts these individuals from the requirements of licensure as substance abuse treatment practitioners.

ITEM 5: EFFECT ON FAMILY FORMATION, STABILITY AND AUTONOMY

Drug and alcohol addiction are diseases which invariably will negatively impact everyone

within the family unit. Spousal and child abuse and neglect, criminal activity and financial ruin are problems frequently associated with substance abuse. The effects of physical and emotional abuse on children have been reported extensively, and it is generally accepted that abuse increases the likelihood that a child will one day become an abusive parent, building on a chain of abuse passed down from one generation to the next.

Individuals who receive the education and training in substance abuse that is required for licensure are more likely to be successful in treating the abuser. Licensed practitioners will recognize that treatment must involve all family members, and work towards building a functional family unit.