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Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Board of Psychology, Department of Health Professions
Virginia Administrative Code (VAC) citation(s)	18VAC125-20
Regulation title(s)	Regulations Governing the Practice of Psychology
Action title	Periodic review
Date this document prepared	8/29/17

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Subject matter and intent

Please describe briefly the subject matter, intent, and goals of the planned regulatory action.

The Board intends to update its regulations for consistency and clarity, reduce the regulatory hurdle for licensure by endorsement, increase the opportunities for continuing education credits, specify a time frame within which an applicant must have passed the national examination, and simplify the requirement for individual supervision in a residency. The Board will also consider requiring all psychology doctoral programs to be accredited by the American Psychological Association, the Canadian Psychological Association or another accrediting body acceptable to the Board within three years of the effective date of the regulation. Finally, the Board intends to revamp its regulations on standards of conduct to emphasize rules for professionalism, confidentiality, client records, and prohibitions on dual relationships.

Legal basis

Please identify the (1) the agency (includes any type of promulgating entity) and (2) the state and/or federal legal authority for the proposed regulatory action, including the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable. Your citation should 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's overall regulatory authority.

Regulations of the Board of Psychology are promulgated under the general authority of Title 54.1, Chapter 24 of the Code of Virginia.

Chapter 24 establishes the general powers and duties of health regulatory boards including the responsibility to promulgate regulations in accordance with the Administrative Process Act which are reasonable and necessary.

§ 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 (§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.

The statutory powers and duties of the Board are found in:

§ 54.1-3605. Powers and duties of the Board.

In addition to the powers granted in other provisions of this title, the Board shall have the following specific powers and duties:

- 1. To cooperate with and maintain a close liaison with other professional boards and the community to ensure that regulatory systems stay abreast of community and professional needs.*
- 2. To conduct inspections to ensure that licensees conduct their practices in a competent manner and in conformance with the relevant regulations.*
- 3. To designate specialties within the profession.*
- 4. To issue a temporary license for such periods as the Board may prescribe to practice psychology to persons who are engaged in a residency or pursuant to subdivision 7 of § 54.1-3601.*
- 5. To promulgate regulations for the voluntary certification of licensees as sex offender treatment providers.*
- 6. To administer the mandatory certification of sex offender treatment providers for those professionals who are otherwise exempt from licensure under subdivision 4 of §§ 54.1-3501, 54.1-3601 or § 54.1-3701 and to promulgate regulations governing such mandatory certification. The regulations shall include provisions for fees for application processing, certification qualifications, certification issuance and renewal and disciplinary action.*
- 7. To promulgate regulations establishing the requirements for licensure of clinical psychologists that shall include appropriate emphasis in the diagnosis and treatment of persons with moderate and severe mental disorders.*

The requirement for licensure of psychologists is found in:

§ 54.1-3606. License required.

A. In order to engage in the practice of applied psychology, school psychology, or clinical psychology, it shall be necessary to hold a license.

Purpose

Please describe 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, please explain any potential issues that may need to be addressed as the regulation is developed.

Additional standards of conduct and causes for disciplinary action will provide further guidance to psychologists on the expectations for ethical practice and give the Board more explicit grounds on which to discipline practitioners for the purpose of protecting the health, safety and welfare of the public they serve.

Substance

Please briefly identify and explain the new substantive provisions that are being considered, the substantive changes to existing sections that are being considered, or both.

The Board has reviewed Chapter 20 and intends to amend the following sections:

Section 10: Definitions.

The Board intends to add definitions for the terms “CAEP,” “client or patient,” “face-to-face,” “intern,” and “resident.”

Section 30: Fees required by the board.

The term “lapsed” license will be changed to “expired” license, and subsection C is outdated and can be deleted.

Section 35: Change of name or address.

A new section will be added under General Provisions to specify the requirement for a licensee to notify the Board of any changes in name or address; the regulation is currently found in the renewal section.

Section 41: Requirements for licensure by examination.

The Board will consider requiring a report of the National Practitioner Data Bank for all applicants and to specify that an applicant shall not have surrendered his license while under investigation or have unresolved action against him. The Board will also modify the requirement to specify “all parts” of the national examination since it is moving towards a two-step examination.

Section 42: Prerequisites for licensure by endorsement.

One of the options for licensure by endorsement will be amended to clarify that the National Register of Health Service Psychologists is required, not just a “listing.” Currently, one option is

10 years of active practice, but the Board will consider amending that practice qualification to 24 out of the last 60 months.

Section 54: Education requirements for clinical psychologists.

The Board intends to require all educational programs to be nationally accredited by three years after the effective date of the regulation; currently APA accreditation is required but there are provisions under which an applicant can submit information indicating APA-equivalency. Graduates of programs outside the U.S. or Canada would still be able to submit documentation from a credentialing evaluation services verifying equivalency.

Section 56: Education requirements for school psychologists.

Language about accrediting bodies will be updated and clarified.

Section 65: Supervised experience.

The internship requirement will be amended to include accreditation by the Canadian Psychological Association and to specify that an internship obtained in an educational program outside the U.S. or Canada must be verified for equivalency by a credentialing service. Under the residency requirements, the timeframe for the minimum of two hours of individual supervision will be changed from “per week” to “per 40 hours” to allow for gaps when a resident or supervisor is on vacation or ill. The Board will count supervision hours obtained outside of Virginia, provided there is evidence of board approval in the other jurisdiction. The Board will set a time limit of three or four years prior to submission of an application for licensure for residency hours to be completed.

Section 80: General examination requirements.

Eligibility to sit for the national examination may be amended to allow an applicant who completed residency requirements in a practicum as part of the educational program is also eligible. Currently, regulations require a candidate to sit for the examination within two years of initial board approval. The Board will consider an amendment to require passage of the final part of the examination within two years immediately preceding application for licensure, unless there are extenuating circumstances. Rules will be amended to be inclusive of a two-part examination with candidates taking the first part during their educational program and the second part after completion of supervised experience.

Section 120: Annual renewal of licensure.

An amendment will clarify that a person with an inactive license is not eligible to practice. Rules about a change of address will be moved to a new section 35 under General Provisions.

Section 121: Continuing education course requirements for renewal of an active license.

Language for continuing education will be amended to allow specified work on a professional journal to be counted for up to four hours and completion of or teaching a three-credit academic course could be counted for up to 14 hours.

Section 122: Continuing education providers.

The specific reference to forensic psychology organizations as approved providers of CE will be deleted as no other specialty organization is mentioned and they would qualify under other provisions. The requirement for a CE certificate will be amended to specify that the certificate must indicate the number of hours designated as ethics.

Section 130: Late renewal; reinstatement; reactivation.

This section will be amended to clarify that renewal of an expired license requires completion of the CE as well as payment of fees.

Section 150: Standards of practice.

A section will be added to ensure that psychological services, whether face-to-face or by another delivery method, are subject these standards. Standards are added for consistency with the APA Code of Ethics and with other mental health and health regulatory boards as they relate to competency to practice, accurate representation, professional responsibilities, informed consent and disclosure, documentation and client records, confidentiality, and multiple relationships that might impair professional judgment or increase the risk of exploitation or harm.

Section 160. Grounds for disciplinary action or denial of licensure.

The current grounds for denial of licensure or disciplinary action have been clarified, and several added, including performance of an act likely to deceive, defraud or harm the public and knowingly allowing a person under supervision to jeopardize client safety. The Board would also have grounds based on action taken by another health or mental health regulatory board and for failure to cooperate with a DHP investigator or for failure to report child abuse or elder abuse.

In addition to changes that the Board intends to adopt as noticed above, the Board may make other non-substantive or editorial changes to regulations.

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. 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 regulation.

Since the requirements for licensure and practice are set in regulation, amendments are necessary to make any changes. There are no alternatives that meet the essential purpose of protection of the public.

Public participation

Please indicate whether the agency is seeking comments on the intended regulatory action, including ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public hearing is to be held to receive comments. Please include one of the following choices: 1) a panel will be appointed and the agency’s contact if you’re interested in serving on the panel is _____; 2) a panel will not be used; or 3) public comment is invited as to whether to use a panel to assist in the development of this regulatory proposal.

The agency is seeking comments on this regulatory action, including but not limited to: ideas to be considered in the development of this proposal, the costs and benefits of the alternatives stated in this background document or other alternatives, and the 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: projected reporting, recordkeeping, and other administrative costs; the probable effect of the regulation on affected small businesses;

and the description of less intrusive or costly alternatives for achieving the purpose of the regulation.

Anyone wishing to submit comments may do so via the Regulatory Townhall website , www.townhall.virginia.gov, or by mail, email or fax to Elaine Yeatts, Agency Regulatory Coordinator, 9960 Mayland Drive, Henrico, VA 23233 or elaine.yeatts@dhp.virginia.gov or by fax to (804) 527-4434. Written comments must include the name and address of the commenter. In order to be considered comments must be received by 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 (<https://www.virginia.gov/connect/commonwealth-calendar>). Both oral and written comments may be submitted at that time.

A regulatory panel will not be used to develop the proposed regulation, which will be drafted by the Regulatory Committee of the Board.

Periodic review and small business impact review report of findings

If this NOIRA is the result of a periodic review/small business impact review, use this NOIRA to report the agency's findings. Please (1) summarize all comments received during the public comment period following the publication of the Notice of Periodic Review and (2) indicate whether the regulation meets the criteria set out in Executive Order 17 (2014), e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable. In addition, as required by 2.2-4007.1 E and F, please include a discussion of the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation from the public; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation.

- 1) A notice of periodic review was posted on the Virginia Regulatory Townhall on October 31, 2016 with comment requested until November 30, 2016. The Notice was also sent to interested parties on the Public Participation Guidelines mailing list for the Board. No comment was received.
- 2) The Regulatory Committee has engaged in a line-by-line review of Chapter 20 to ensure that “it is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable.” Where additional clarity is needed, amendments will be proposed. The Board also intends to amend its standards of practice to ensure greater protection of public health and safety.
- 3) The Board has considered the following:
 - (a) There is a continued need for the regulation because licensure of psychologists and continuing education are required by the Code of Virginia, and regulatory standards of conduct are necessary for public protection;

- (b) There have been no complaints concerning the regulation from the public; complaints from the public about psychologists are reviewed in light of standards set in regulation, so those standards are being modified to ensure the Board's authority to take disciplinary action when necessary;
- (c) The complexity of the regulation has been considered; it is modified for clarification where necessary;
- (4) The regulation does not overlap, duplicate, or conflict with federal or state law or regulation; and
- (5) This chapter has been amended six times in the past five years, including a review of the entire regulation with amendments completed in September of 2013.