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Final Regulation Agency Background Document

Agency name	Department of Behavioral Health and Developmental Services
Virginia Administrative Code (VAC) citation(s)	12VAC35-105
Regulation title(s)	Rules and Regulations For Licensing Providers by the Department of Behavioral Health and Developmental Services
Action title	Add OTs, OTAs, and editing definitions of QMHP, QDDP, Paraprofessionals per Ch 136 and 418 (2017)
Date this document prepared	March 8, 2019

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.

This final regulatory action is brought as the next step of the process to comply with Chapters [136](#) and [418](#) of the 2017 Acts of Assembly regarding who shall be included in the definitions of qualified mental health professionals, qualified mental developmental disability professionals, and qualified paraprofessionals in mental health. The State Board of Behavioral Health and Developmental Services, in Chapter 136, was required to include occupational therapists and occupational therapy assistants in certain definitions of the above named professional categories, and to establish corresponding educational and clinical experience for occupational therapists and occupational therapy assistants that are substantially equivalent to comparable professionals listed in the current licensing regulations.

Certain definitions are deferred, in accordance with Chapter 418, to the Department of Health Professions' [Board of Counseling](#) (18VAC115-80).

An [emergency regulation](#) became effective on December 18, 2017, and expires June 17, 2019.

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.

“Department” or “DBHDS” means the Department of Behavioral Health and Developmental Services.

“OTA” means occupational therapy assistant.

“OT” means occupational therapist.

“QMHP” means a qualified mental health professional.

“QMHP-P” means a qualified mental health paraprofessional.

“QMHP-A” means a qualified mental health professional who provides services to adults.

“QMHP-C” means a qualified mental health professional who provides services to children.

“QMHP-E” means a person who is qualified mental health professional eligible receiving supervised training in order to qualify as a QMHP.

“QDDP” means qualified developmental disability professional.

“State Board” means the State Board of Behavioral Health and Developmental Services.

Statement of Final Agency Action

Please provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.

At the regular meeting held on February 25, 2019, the State Board of Behavioral Health and Developmental Services voted to move to final stage without amendment to the language from the previous stage to amend the DBHDS licensing regulations, Rules and Regulations for Licensing Providers by the Department of Behavioral Health and Developmental Services [12VAC35-105].

Mandate and Impetus

Please list all changes to the information reported on the Agency Background Document submitted for the previous stage regarding the mandate for this regulatory change, and any other impetus that specifically prompted its initiation. If there are no changes to previously-reported information, include a specific statement to that effect.

Chapters [136](#) and [418](#) of the 2017 Acts of Assembly mandated this regulatory change. There are no changes to the mandate or impetus from the previous stage.

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.

At the regular meeting held on February 25, 2019, the State Board voted to initiate the final stage of this action without amendment to the language from the previous stage. Sections 37.2-203 and 37.2-304 of the Code of Virginia authorize the Board to adopt regulations that may be necessary to carry out the provisions of Title 37.2 and other laws of the Commonwealth administered by the Commissioner and the Department. An emergency regulation became effective on December 18, 2017, and expires June 17, 2019. This final regulatory action comes as the next step of the standard process for permanent adoption, as approved by the State Board on February 25, 2019.

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 purpose of this regulatory action is to be consistent and comply with Chapters 136 and 418 of the 2017 Acts of Assembly regarding who shall be included in the definitions of qualified mental health professionals, qualified mental developmental disability professionals, and qualified paraprofessionals in mental health. Also, certain definitions are deferred, in accordance with Chapter 418, to the Department of Health Professions' Board of Counseling (18VAC115-80). This action supports the expansion of the workforce in Virginia's behavioral health and developmental services system.

Chapter 418 of the 2017 Acts of Assembly required QMHP-As and QMHP-Cs to register with the Department of Health Professions if they have the education and experience to be deemed professionally qualified by the Board of Counseling in accordance with 18VAC115-80. This will be beneficial to the population served by DBHDS because there will be more professional accountability of education, experience, and scope of practice for those professionals.

Occupational therapists (OTs) and occupational therapy assistants (OTAs) are beneficial to the population that DBHDS serves in that OTs and OTAs help develop, improve, sustain, or restore independence to any person who has an injury, illness, disability, or psychological dysfunction.

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.

Chapter 418 of the 2017 Acts of Assembly required QMHP-As and QMHP-Cs to register with the Department of Health Professions if they have the education and experience to be deemed professionally qualified by the Board of Counseling in accordance with 18VAC115-80.

In Section 20, the general definition of QMHP from 18VAC115-80-20 is included. The definitions of QMHP-A and QMHP-C have a cross-reference to the Board of Counseling regulation (18VAC115-80), with repetition in each definition of the following sentence from the general QMHP definition from 18VAC115-80-20: 'A QMHP-A shall provide such services as an employee or independent contractor of the DBHDS or a provider licensed by the DBHDS.' Also, the definition of QMHP-E is amended with the same cross-reference to the Board of Counseling regulation and requirement to register.

In the definitions of the newly titled "Qualified Developmental Disability Professional" (QDDP; previously QDDP) and Qualified Mental Health Paraprofessionals (QMHPs), OTs are inserted in QDDP and OTAs are inserted in QMHP. Requirements for experience are updated in both.

Amendments are made in sections 590 (Provider Staffing Plan) and 1370 (Treatment Team and Staffing Plan), to accurately mirror the definitions of QMHP in 590; and in 1370, to remove the reference to meeting standards and simplify the language to make clear that at least 80% of the clinical employees or contractors shall be QMHP-As.

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.

Comprehensive behavioral health is essential to population health and cost containment. The primary advantage to the public, such as individual private citizens or businesses, of implementing the amended provisions is to improve the organization and growth of the 'Q' professional fields through registration, and consistent training and experience. The people working in these roles are important to the overall behavioral health and developmental service system. There is no disadvantage to individual citizens or businesses. Service providers will have to ensure proper registration of 'Q' staff for Medicaid billing.

The primary advantages to the agency and the Commonwealth are the ability to: track how many professionals or 'eligibles' are in Virginia and where they are located (and where there are gaps); confirm who is in good standing as a 'Q;' and confirm who is eligible for Medicaid billing.

Requirements More Restrictive than Federal

Please list all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any requirement of the regulatory change which is more restrictive than applicable federal requirements. If there are no changes to previously-reported information, include a specific statement to that effect.

There are no requirements more restrictive than federal requirements.

Agencies, Localities, and Other Entities Particularly Affected

Please list all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any other state agencies, localities, or other entities that are particularly affected by the regulatory change. If there are no changes to previously-reported information, include a specific statement to that effect.

Other State Agencies Particularly Affected

The Department of Health Professions is affected by this proposed regulation.

Localities Particularly Affected

There is no locality particularly affected by this proposed regulation.

Other Entities Particularly Affected

Individuals currently working as QMHPs are affected by this proposed regulation. However the benefit to the Commonwealth to have registration through the Board of Counseling is significantly worthwhile. Also, individuals who are occupational therapists (OTs) who want to work as a QMHP and occupational therapy assistants (OTAs) who want to work as a as QPPMH are affected by this proposed regulation in a way that is beneficial to them.

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.

Commenter	Comment	Agency response
	<p>The VSCSW and the GWSCSW have several concerns about the proposed regulations:</p> <ul style="list-style-type: none"> • There are significant inconsistencies between the directives provided by the General Assembly concerning OT's and OTA's being included as QMHP's and the requirements established by the Board of Counseling for QMHP's, QMHP-A' s and QMHP-C's. • The definition of QMHP-A in the DBHDS regulations and the definition of QMHP-A in the Board of Counseling regulations are not the same. The DBHDS definition of QMHP-A includes " ... any other licensed mental health professional ..." while the Board of Counseling definition of QMHP-A does not. • The General Assembly has established the Joint Subcommittee to Study Mental Health Services in the Commonwealth in the Twenty-First Century. It seems prudent that any changes in the QMHP credential should be studied by this committee. • It is an admirable goal for QMHP's to be registered in order for the Commonwealth for the first time ever to have a count of the number of QMHP's and have the ability to regulate this group of providers. However assigning the title "Qualified" connotes that the Commonwealth has evaluated these provider's credentials and training. It suggests that the person has passed some minimum competency exam. It purports to 	<p>Thank you for your comment.</p> <ul style="list-style-type: none"> • The proposed regulatory draft was promulgated in order to comply with the mandates within Chapters 136 and 418 of the 2017 Acts of Assembly regarding who shall be included in the definitions of qualified mental health professionals, qualified developmental disability professionals, and qualified paraprofessionals in mental health. Chapter 136 required the State Board to include occupational therapists and occupational therapy assistants in certain definitions of the above named professional categories, and to establish corresponding educational and clinical experience for occupational therapists and occupational therapy assistants that are substantially equivalent to comparable professionals listed in the current licensing regulations. • The definition of QMHP-A in the DBHDS regulations does not include "any other licensed mental health professional." The proposed definition cross references to the Board of Counseling definition. • Chapter 418 of the 2017 Acts of Assembly mandated QMHP-As and QMHP-Cs to register with the

	<p>offer the public some level of assurance that these providers are competent and safe to offer mental health services. The consumer can very legitimately ask "What is the difference between "Qualified" and "Licensed"?"</p> <ul style="list-style-type: none"> •Registration is the lowest form of regulation of a profession by government. Certification and Licensure are more stringent levels of regulation. While the directive to the Board of Counseling is to establish "Registration of QMHP's" the details of the directive are more closely aligned with the requirements for "certification." The Commonwealth of Virginia creates a risk to the health, welfare and safety of the public with this confusion. •The Board of Counseling regulations require that the QMHP " ...shall provide such services as an employee or independent contractor of the DBHDS or a provider licensed by the DBHDS..." This establishes a two tiered system of mental health services in the Commonwealth. Citizens who receive mental health services at agencies or facilities operated or licensed by the Commonwealth receive services from "QMHP's" while citizens not receiving mental health services from the Commonwealth will see "Licensed" mental health providers. •The proposed DBHDS regulations as published in the Virginia Register, December 10, 2018, page 1080, (See attached) note that " ...QMHP-A means a person who by education and experience is professionally qualified and registered with the Board of Counseling in accordance with 18VACJ 15-80..." thus deferring to the Board of Counseling regulations on QMHP registration. The definitions in those regulations create some confusion in that: <ul style="list-style-type: none"> O "Mental health professional" means a person who (is) ...licensed in Virginia..." O "Qualified Mental Health Professional-Adult... means... (a person)... who is trained and experienced in providing mental health services to adults who have a mental illness... " O "Qualified mental health professional-... means a person who ... is... to provide 	<p>Department of Health Professions if they have the education and experience to be deemed professionally qualified by the Board of Counseling in accordance with 18VAC115-80.</p> <ul style="list-style-type: none"> • The language stating QMHPs shall provide such services as an employee or independent contractor of the DBHDS serves as a clarification that QMHPs should not engaged in independent or autonomous practice, as they are not licensed mental health professionals. Instead, the regulations require that they provide collaborative services licensed by operated by the department in conjunction with a licensed mental health professional. • Qualified Mental Health Professionals are not independent providers. They are qualified staff working within a service licensed or operated by DBHDS. QMHPs provide services as set forth in a serve plan under the direction of and in collaboration with either a mental health professional licensed in Virginia or a person under supervision that has been approved by the Board of Counseling, Psychology, or Social Work as a pre-requisite for licensure. Comments related to the definitions and qualifications contained with the Board of Counseling emergency regulations should be sent directly to the Board of Counseling. The public comment period is currently underway and will end on April 5, 2019. Public comments can be submitted on the Virginia Regulatory Town Hall website.
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	<p>collaborative mental health services... " O "Collaborative mental health services" means... services...provided by a... (QMHP)... under the direction of and in collaboration with... a (person who is)... licensed in Virginia... "</p> <ul style="list-style-type: none"> • SO THIS MEANS THAT: • The Licensed mental health provider is not included in the definition of a "Qualified" mental health provider. • The QMHP-A clearly is a provider who is " ... trained and experienced in providing mental health services to adults with mental illness... " • Yet the QMHP may only deliver "collaborative mental health services" • Collaborative mental health services can only be delivered under the supervision of a licensed mental health professional. • All of this confusion creates a great risk that the proposed regulations of the DBHDS regarding OT's and OTA's as QMHP's will undermine the mission of the Department of Health Professions " ... to ensure safe and competent patient care by licensing health professionals, enforcing standards of practice, and providing information to health care practitioners and the public... " <p><i>Please see attached for the full public comment by Mr. Lynch.</i></p>	
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No comments were received during the public hearing held during the proposed stage.

Detail of Changes Made Since the Previous Stage

*Please list all changes made to the text since the previous stage was published in the Virginia Register of Regulations and the rationale for the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. * Please put an asterisk next to any substantive changes.*

Current chapter-section number	New chapter-section number, if applicable	New requirement from previous stage	Updated new requirement since previous stage	Change, intent, rationale, and likely impact of updated requirements

There are no recommendations for additional amendments.

Detail of All Changes Proposed in this Regulatory Action

*Please list all changes proposed in this action and the rationale for the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. * Please put an asterisk next to any substantive changes.*

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
20		<p>N/A</p> <p>Currently QMHPs are defined only in the DBHDS regulation as: "Qualified Mental Health Professional-Adult (QMHP-A)" means a person in the human services field who is trained and experienced in providing psychiatric or mental health services to individuals who have a mental illness; including (i) a doctor of medicine or osteopathy licensed in Virginia; (ii) a doctor of medicine or osteopathy, specializing in psychiatry and licensed in Virginia; (iii) an individual with a master's degree in psychology from an accredited college or university with at least one year of clinical experience; (iv) a social worker: an individual with at least a bachelor's degree in human services or related field (social work, psychology, psychiatric rehabilitation, sociology, counseling, vocational rehabilitation, human services counseling or other degree deemed equivalent to those</p>	<ul style="list-style-type: none"> • The general definition of QMHP from 18VAC115-80-20 is included. <p>In the definitions of QMHP-A and QMHP-C:</p> <ul style="list-style-type: none"> • Amend the definitions to be a cross-reference to the Board of Counseling regulation (18VAC115-80), with repetition in each definition of the following sentence from the general QMHP definition from 18VAC115-80-20: <ul style="list-style-type: none"> ○ 'A QMHP-A shall provide such services as an employee or independent contractor of the DBHDS or a provider licensed by the DBHDS.'

	<p>described) from an accredited college and with at least one year of clinical experience providing direct services to individuals with a diagnosis of mental illness; (v) a person with at least a bachelor's degree from an accredited college in an unrelated field that includes at least 15 semester credits (or equivalent) in a human services field and who has at least three years of clinical experience; (vi) a Certified Psychiatric Rehabilitation Provider (CPRP) registered with the United States Psychiatric Rehabilitation Association (USPRA); (vii) a registered nurse licensed in Virginia with at least one year of clinical experience; or (viii) any other licensed mental health professional.</p> <p>"Qualified Mental Health Professional-Child (QMHP-C)" means a person in the human services field who is trained and experienced in providing psychiatric or mental health services to children who have a mental illness. To qualify as a QMHP-C, the individual must have the designated clinical experience and must either (i) be a doctor of medicine or osteopathy licensed in Virginia; (ii) have a master's degree in psychology from an accredited college or university with at least one year of clinical experience with children and adolescents; (iii) have a social work bachelor's or master's degree from an accredited college or university with at least one year of documented clinical experience with children or adolescents; (iv) be a registered nurse with at least one year of clinical</p>	<ul style="list-style-type: none"> • Amend to read: "Qualified Mental Health Professional-Eligible (QMHP-
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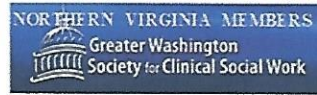
	<p>experience with children and adolescents; (v) have at least a bachelor's degree in a human services field or in special education from an accredited college with at least one year of clinical experience with children and adolescents, or (vi) be a licensed mental health professional.</p> <p>"Qualified Mental Health Professional-Eligible (QMHP-E)" means a person who has:</p> <p>(i) at least a bachelor's degree in a human service field or special education from an accredited college without one year of clinical experience or (ii) at least a bachelor's degree in a nonrelated field and is enrolled in a master's or doctoral clinical program, taking the equivalent of at least three credit hours per semester and is employed by a provider that has a triennial license issued by the department and has a department and DMAS-approved supervision training program.</p> <p>Currently, QDDPs and QMHPPs are defined only in the DBHDS regulation as: Qualified Mental Developmental Disability Professional (QDDP)" means a person who possesses at least one year of documented experience working directly with individuals who have developmental disabilities and one of the following credentials: (i) a doctor of medicine or osteopathy licensed in Virginia, (ii) a registered nurse licensed in Virginia, or (iii) completion of at least a bachelor's degree in a human services field, including, but not limited to sociology, social work,</p>	<p>E)" means a person receiving supervised training in order to qualify as a QMHP in accordance with 18VAC115-80 and who is registered with the Board of Counseling.</p> <ul style="list-style-type: none"> • Change the term to "Qualified Developmental Disability Professional," • Insert OTs and amend qualifications as follows: OTs will be required to also have one year of experience with the intellectual disability population or other developmental disability (this is the same requirement for other degrees listed). <p>In the definition of QMHPP:</p> <ul style="list-style-type: none"> • Insert OTAs • Require OTAs to be supervised by a licensed OT. • Require OTAs to also have one year of experience with the intellectual disability population or other developmental disability (this is the same requirement for other degrees listed).
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		<p>special education, rehabilitation counseling, or psychology. "Qualified Paraprofessional in Mental Health (QPPMH)" means a person who must, at a minimum, meet one of the following criteria: (i) registered with the United States Psychiatric Association (USPRA) as an Associate Psychiatric Rehabilitation Provider (APRP); (ii) has an associate's degree in a related field (social work, psychology, psychiatric rehabilitation, sociology, counseling, vocational rehabilitation, human services counseling) and at least one year of experience providing direct services to individuals with a diagnosis of mental illness; or (iii) has a minimum of 90 hours classroom training and 12 weeks of experience under the direct personal supervision of a QMHP-Adult providing services to individuals with mental illness and at least one year of experience (including the 12 weeks of supervised experience).</p>	
590		<p>In C 6 of the subdivision, currently DBHDS regulations state: 6. Supervision of mental health, substance abuse, or co-occurring services that are of a supportive or maintenance nature, such as psychosocial rehabilitation, mental health supports shall be provided by a QMHP-A. An individual who is QMHP-E may not provide this type of supervision.</p>	<p>After 'shall be provided by a QMHP-A'</p> <ul style="list-style-type: none"> • Insert: ', a licensed mental health professional, or a mental health professional who is license-eligible and registered with a board of the Department of Health Professions.'
1370		<p>In A 2 of the subdivision, it currently states: QMHP-Adult and mental health professional standards: a. At least 80% of the clinical</p>	<p>Amend to remove the reference to meeting standards and simplifies the language:</p> <ul style="list-style-type: none"> • a. At least 80% of the clinical employees or contractors, not including the program assistant or

		employees or contractors, not including the program assistant or psychiatrist, shall meet QMHP-Adult standards and shall be qualified to provide the services described in 12VAC35-105-1410.	psychiatrist, shall be QMHP-As and shall be qualified to provide the services described in 12VAC35-105-1410.
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AND



*Virginia Society for Clinical Social Work
5537 Solaris Drive
Chesterfield Virginia 23832*

December 21, 2018

Public Comment

**To the Department of Behavioral Health and Developmental Services (DBHDS)
Concerning Proposed Changes of the Rules and Regulations For Licensing Providers by
the Department of Behavioral Health and Developmental Services [12 VAC 35 - 105] as
they relate to adding OTs, OTAs, and editing definitions of QMHP, QMRP,
Paraprofessionals per Ch 136 and 418 (2017)**

The Virginia Society for Clinical Social Work (VSCSW) and the Northern Virginia members of the Greater Washington Society for Clinical Social Work (GWSCSW) appreciate the opportunity to make public comment to the DBHDS regarding the proposed regulations noted above. We understand that the DBHDS has been directed by the Virginia General Assembly to develop regulations to be consistent and comply with Chapters 136 and 418 of the 2017 Acts of Assembly regarding who shall be included in the definitions of qualified mental health professionals, qualified mental retardation professionals, and qualified paraprofessionals in mental health. And we understand that concurrently the Virginia General Assembly directed the Department of Health Professions' Board of Counseling to develop regulations (18VAC115-80) consistent with Chapter 418 of the 2017 Acts of Assembly.

However well-intended the Virginia General Assembly was in giving these directives to the DHP and the DBHDS, the actual implementation of the directives had caused a number of unintended and confusing consequences that undermine the delivery of mental health services in the Commonwealth.

The Board of Counseling has established emergency regulations with an effective date of December 18, 2017 for Qualified Mental Health Professionals (QMHP) (See Attached 18VAC115-80). The regulations provide definitions for QMHP's as follows:

"Qualified mental health professional or QMHP" means a person who by education and experience is professionally qualified and registered by the board to provide collaborative mental health services for adults or children. A QMHP shall not engage in independent or autonomous practice. A QMHP shall provide such services as an employee or independent contractor of the DBHDS or a provider licensed by the DBHDS.

"Qualified Mental Health Professional-Adult or QMHP-A" means a registered QMHP who is trained and experienced in providing mental health services to adults who have a mental illness. A QMHP-A shall provide such services as an employee or independent contractor of the DBHDS or a provider licensed by the DBHDS.

"Qualified Mental Health Professional-Child or QMHP-C" means a registered QMHP who is trained and experienced in providing mental health services to children or adolescents who have a mental illness. A QMHP-C shall provide such services as an employee or independent contractor of the DBHDS or a provider licensed by the DBHDS.

https://www.dhp.virginia.gov/counseling/counseling_QMHP.htm

Also the regulations delineate the requirements for OT's and OTA's to register with the Board of Counseling as follows:

Part II. Requirements for Registration. 18VAC115-80-40. Requirements for registration as a QMHP-A.

A. An applicant for registration shall submit a completed application on forms provided by the board and any applicable fee as prescribed in 18VAC115-80-20.

B. An applicant for registration as a QMHP-A shall provide evidence of either:

1. A master's degree in psychology, social work, counseling, substance abuse, or marriage and family therapy from an accredited college or university with an internship or practicum of at least 500 hours of experience with persons who have mental illness;
2. A master's or bachelor's degree in human services or a related field from an accredited college with no less than 1,500 hours of supervised experience to be obtained within a five-year period immediately preceding application for registration and as specified in subsection C of this section;
3. A bachelor's degree from an accredited college in an unrelated field that includes at least 15 semester credits or 22 quarter hours in a human services field and with no less than 3,000 hours of supervised experience to be obtained within a five-year period immediately preceding application for registration and as specified in subsection C of this section;
4. A registered nurse licensed in Virginia with no less than 1,500 hours of supervised experience to be obtained within a five-year period immediately preceding application for registration and as specified in subsection C of this section; or
5. A licensed occupational therapist with no less than 1,500 hours of supervised experience to be obtained within a five-year period immediately preceding application for registration and as specified in subsection C of this section.

C. Experience required for registration.

1. In order to be registered as a QMHP-A, an applicant who does not have a master's degree as set forth in subsection B 1 of this section shall provide documentation of experience in providing direct services to individuals as part of a population of adults with mental illness in a setting where mental health treatment, practice, observation or diagnosis occurs. The services provided shall be appropriate to the practice of a QMHP-A and under the supervision of a licensed mental health professional or a person under supervision that has been approved by the Boards of Counseling, Psychology, or Social Work as a pre-requisite for licensure.
2. Supervision shall consist of face-to-face training in the services of a QMHP-A until the supervisor determines competency in the provision of such services, after which supervision may be indirect in which the supervisor is either on-site or immediately available for consultation with the person being trained.
3. Hours obtained in a bachelor's or master's level internship or practicum in a human services field may be counted towards completion of the required hours of experience.
4. A person receiving supervised training in order to qualify as a QMHP-A may register with the board.

https://www.dhp.virginia.gov/counseling/counseling_QMHP.htm

Chapter 136 of the 2017 General Assembly (See below) direct the DBHDS to include OT's in the definition of QMHP-A, QMHP-C & QMRP's and directs the DBHDS to include OTA's as QPMH's.

CHAPTER 136

An Act to require the State Board of Behavioral Health and Developmental Services to amend regulations governing licensure of providers to include certain definitions.

[H 1483]

Approved February 21, 2017

Be it enacted by the General Assembly of Virginia:

1. § 1. That the State Board of Behavioral Health and Developmental Services (the Board) shall amend 12VAC35-105-20 of the Virginia Administrative Code to include (i) occupational therapists in the definitions of Qualified Mental Health Professional-Adult, Qualified Mental Health Professional-Child, and Qualified Mental Retardation Professional and (ii) occupational therapy assistants in the definition of Qualified Paraprofessional in Mental Health. In amending these definitions, **the Board shall require educational and clinical experience for occupational therapists and occupational therapy assistants that is substantially equivalent to comparable professionals listed in current regulations.**
2. That the State Board of Behavioral Health and Developmental Services shall promulgate regulations to implement the provisions of this act to be effective within 280 days of its enactment.

The current DBHDS Regulations define QMHP-A. The definition list out the "comparable professionals" as follows:

"Qualified Mental Health Professional-Adult (QMHP-A)" means a person in the human services field who is trained and experienced in providing psychiatric or mental health services to individuals who have a mental illness; including

- (i) a doctor of medicine or osteopathy licensed in Virginia;
- (ii) a doctor of medicine or osteopathy, specializing in psychiatry and licensed in Virginia;
- (iii) an individual with a master's degree in psychology from an accredited college or university with at least one year of clinical experience;
- (iv) a social worker: an individual with at least a bachelor's degree in human services or related field (social work, psychology, psychiatric rehabilitation, sociology, counseling, vocational rehabilitation, human services counseling or other degree deemed equivalent to those described) from an accredited college and with at least one year of clinical experience providing direct services to individuals with a diagnosis of mental illness;
- (v) a person with at least a bachelor's degree from an accredited college in an unrelated field that includes at least 15 semester credits (or equivalent) in a human services field and who has at least three years of clinical experience;
- (vi) a Certified Psychiatric Rehabilitation Provider (CPRP) registered with the United States Psychiatric Rehabilitation Association (USPRA);
- (vii) a registered nurse licensed in Virginia with at least one year of clinical experience; or
- (viii) any other licensed mental health professional.

12VAC35-105-10

<http://23.29.59.140/library/licensing/ol%20%20chapter%20105%20rules%20and%20regulations%20for%20licensing%20providers%20by%20the%20department%20of%20behavioral%20health%20and%20developmental%20services%203.pdf>

The DBHDS regulations clearly state that the person "...is **trained and experienced in providing psychiatric or mental health services to individuals who have a mental illness...**"
So the groups of "comparable professionals" are all trained to provide direct psychiatric or

mental health services to individuals with a mental illness. Providing Occupational Therapy services to persons with a diagnosis of mental illness does not meet this requirement.

A brief review of the curriculum requirements for a Masters in Occupational Therapy at VCU show only one course title that is somewhat connected to mental health (*Psychosocial Evaluation and Intervention I: Foundations*- See Attached). So the "training" is not the level of training of "comparable professionals."

The Board of Counseling was directed by the Virginia General Assembly to develop regulations for the registration of QMHP's (See Attached sections of Chapter 418 related to QMHP's) The Board of Counseling Regulations requires that "...*The services provided shall be appropriate to the practice of a QMHP-A and under the supervision of a licensed mental health professional...*" The services appropriate to the practice of a QMHP-A are mental health services not occupational therapy services. Occupational Therapists are unlikely to be under the supervision of "... *a licensed mental health professional...*" when they are providing OT services.

The directives of Chapter 418 require the Board of Counseling to "register" QMHP's. In 1996 the Virginia General Assembly directed the Board of Health Professions to conduct a study on the appropriate criteria to be applied in determining the need for regulation of any health care profession:

§54.1-2409.2. Board to set criteria for determining need for professional regulation.
The Board of Health Professions shall study and prepare a report for submission to the Governor and the General Assembly by October 1, 1997, containing its findings and recommendations on the appropriate criteria to be applied in determining the need for regulation of any health care occupation or profession. Such criteria shall address at a minimum the following principles:.....

As part of that study the Board of Health Professions included an outline that "... *delineates the characteristics of licensure, certification, and registration (the three most commonly used methods of regulation) and specifies the criteria applicable to each level...*"

They define Registration as:

Registration. *Registration requires only that an individual file his name, location, and possibly background information with the State. No entry standard is typically established for a registration program.*

They define Certification as:

Statutory Certification. *Certification by the state is also known as "title protection." No scope of practice is reserved to a particular group, but only those individuals who meet certification standards (defined in terms of education and minimum competencies which can be measured) may title or call themselves by the protected title.*

<https://www.dhp.virginia.gov/bhp/guidelines/75-2.doc>

There is confusion created for the consumer when the requirements of Chapter 418 are labeled “registration” but actually are more similar to “Statutory Certification.”

CONCLUSIONS

The VSCSW and the GWSCSW have several concerns about the proposed regulations:

- There are significant inconsistencies between the directives provided by the General Assembly concerning OT’s and OTA’s being included as QMHP’s and the requirements established by the Board of Counseling for QMHP’s, QMHP-A’s and QMHP-C’s.
- The definition of QMHP-A in the DBHDS regulations and the definition of QMHP-A in the Board of Counseling regulations are not the same. The DBHDS definition of QMHP-A includes “...*any other licensed mental health professional...*” while the Board of Counseling definition of QMHP-A does not.
- The General Assembly has established the *Joint Subcommittee to Study Mental Health Services in the Commonwealth in the Twenty-First Century*. It seems prudent that any changes in the QMHP credential should be studied by this committee.
- It is an admirable goal for QMHP’s to be registered in order for the Commonwealth for the first time ever to have a count of the number of QMHP’s and have the ability to regulate this group of providers. However assigning the title “Qualified” connotes that the Commonwealth has evaluated these provider’s credentials and training. It suggests that the person has passed some minimum competency exam. It purports to offer the public some level of assurance that these providers are competent and safe to offer mental health services. The consumer can very legitimately ask “What is the difference between “Qualified” and “Licensed”?”
- Registration is the lowest form of regulation of a profession by government. Certification and Licensure are more stringent levels of regulation. While the directive to the Board of Counseling is to establish “Registration of QMHP’s” the details of the directive are more closely aligned with the requirements for “certification.” The Commonwealth of Virginia creates a risk to the health, welfare and safety of the public with this confusion.
- The Board of Counseling regulations require that the QMHP “...*shall provide such services as an employee or independent contractor of the DBHDS or a provider licensed by the DBHDS...*” This establishes a two tiered system of mental health services in the Commonwealth. Citizens who receive mental health services at agencies or facilities operated or licensed by the Commonwealth receive services from “QMHP’s” while citizens not receiving mental health services from the Commonwealth will see “Licensed” mental health providers.
- The proposed DBHDS regulations as published in the Virginia Register, December 10, 2018, page 1080, (See attached) note that “...*QMHP-A means a person who by education and experience is professionally qualified and registered with the Board of Counseling in accordance with 18VAC115-80...*” thus deferring to the Board of Counseling regulations on QMHP registration. The definitions in those regulations create some confusion in that:

- “Mental health professional” means a person who (is) ...licensed in Virginia...”
- "Qualified Mental Health Professional-Adult... means... (a person)...who is trained and experienced in providing mental health services to adults who have a mental illness...”
- “Qualified mental health professional-...means a person who ... is... to provide collaborative mental health services...”
- “Collaborative mental health services” means...services...provided by a... (QMHP)...under the direction of and in collaboration with...a (person who is)... licensed in Virginia...”
 - SO THIS MEANS THAT:
 - The Licensed mental health provider is not included in the definition of a “Qualified” mental health provider.
 - The QMHP-A clearly is a provider who is “...trained and experienced in providing mental health services to adults with mental illness...”
 - Yet the QMHP may only deliver “collaborative mental health services”
 - Collaborative mental health services can only be delivered under the supervision of a licensed mental health professional.
- All of this confusion creates a great risk that the proposed regulations of the DBHDS regarding OT’s and OTA’s as QMHP’s will undermine the mission of the Department of Health Professions “...to ensure safe and competent patient care by licensing health professionals, enforcing standards of practice, and providing information to health care practitioners and the public...”

The VSCSW and the GWSCSW contend that the DBHDS proposed regulations in regard to OT's and OTA's as QMHP's should not move forward as currently written. While acknowledging that the Virginia General Assembly has full authority to direct the DBHDS and the DHP to do whatever the General Assembly members pass into law, we would like to respectfully offer a suggestion that it would be in the best interest of public policy for the Governor's office, the Secretary of Health and Human Resources office, ranking members of the General Assembly, and DHP & DBHDS representatives to review the difficulties and confusion that have been created in attempts to develop regulations that comply with the directives of the General assembly.

Sincerely,



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Legislative Vice President VSCSW