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Periodic Review and Small Business Impact Review Report of Findings

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| Agency name | Board of Medicine, Department of Health Professions |
| Virginia Administrative Code (VAC) Chapter citation(s) | 18VAC85-150 |
| VAC Chapter title(s) | Regulations Governing the Practice of Behavior Analysis |
| Date this document prepared | October 6, 2022 |

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Acronyms and Definitions

Define all acronyms used in this Report, and any technical terms that are not also defined in the "Definitions" section of the regulation.

N/A

Legal Basis

Identify (1) the promulgating agency, 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 agency to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.

Regulations of the Board of Medicine are promulgated under the general authority of Chapter 24 of Title 54.1 of the Code of Virginia. Virginia Code § 54.1-2400(6) specifically states that the general powers and duties of health regulatory boards shall be "[t]o promulgate regulations in accordance with the

Administrative Process Act (§ 2.2-4000 et seq.) that are reasonable and necessary to administer effectively the regulatory system.”

Virginia Code § 2957.16 requires the Board to license and regulate behavior analysts and assistant behavior analysts.

Alternatives to Regulation

Describe any viable alternatives for achieving the purpose of the regulation that were considered as part of the periodic review. Include an explanation of why such alternatives were rejected and why this regulation is the least burdensome alternative available for achieving its purpose.

The Board is directed by the General Assembly to license and regulate health professions. There are no alternatives to regulation.

Public Comment

Summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency’s response. Be sure to include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. Indicate if an informal advisory group was formed for purposes of assisting in the periodic review.

| Commenter | Comment | Agency response |
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| Michael Moates, via Town Hall | “The Advisory Board admitted the current text does not comply with the statute. It should be amended to comply with the law or it would be unlawful.” | Although this comment is not specific, it presumably references a previous petition for rulemaking which the Board has already decided. A NOIRA was already filed related to this topic. The periodic review will not address an issue already being revised via the regulatory process. |
| Christy Evanko, Virginia Association for Behavior Analysis, via Town Hall | <p>The regulations should be amended to conform to other professions under the Board.</p> <p>The regulations should clarify qualifications of organizations who can nationally certify someone who is to become licensed.</p> <p>The regulations must address time gaps between certification and licensure.</p> <p>Licensees must maintain certification in order to renew licenses.</p> | <p>The Board appreciates the desire to conform the Board’s many regulations. However, the regulations cover 21 distinct practitioner types, and therefore need to be somewhat unique for each practitioner group in order to protect the public and avoid placing unnecessary or nonsensical requirements on practitioners.</p> <p>The Board only promulgates regulations allowing temporary or provisional practice when permitted to do so by the General Assembly. The Board does not have such direction from the General Assembly with respect to behavior analysts, and therefore will not be making such a change following the periodic review.</p> <p>The other two changes mentioned may be considered by the Board in the future. The Board has determined that, for actions</p> |

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| | | resulting from the 2022 periodic reviews, the focus will remain on removing unnecessary regulations rather than adding regulations. |
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Effectiveness

Pursuant to § 2.2-4017 of the Code of Virginia, indicate whether the regulation meets the criteria set out in the ORM procedures, including why the regulation is (a) necessary for the protection of public health, safety, and welfare, and (b) is clearly written and easily understandable.

This chapter of the regulations of the Board of Medicine is necessary for the protection of public health, safety and welfare because it sets for the requirements for licensure and standards of practice for behavior analysts and assistant behavior analysts. These regulations are necessary to continue to renew licenses for behavior analysts and assistant behavior analysts and to issue new licenses for these professions, which the General Assembly determined is a necessary component of the provision of healthcare in the Commonwealth. These regulations are additionally necessary to protect public health, safety, and welfare by providing a basis for disciplinary actions against practitioners. The Board of Medicine has reviewed this chapter and determined that it is clearly written and understandable.

Decision

Explain the basis for the promulgating agency’s decision (retain the regulation as is without making changes, amend the regulation, or repeal the regulation).

If the result of the periodic review is to retain the regulation as is, complete the ORM Economic Impact form.

The Board decided to retain and amend Chapter 150.

Small Business Impact

As required by § 2.2-4007.1 E and F of the Code of Virginia, discuss the agency’s consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation; (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. Also, discuss why the agency’s decision, consistent with applicable law, will minimize the economic impact of regulations on small businesses.

The regulations are needed for the reasons stated above. The General Assembly requires these professions to be licensed and regulated by the Board. The Board cannot do that without regulations. The Board has received no complaints or comments regarding Chapter 80. The chapter is not unnecessarily complex, as explained above. The regulations do duplicate some state law; those provisions will be eliminated in the subsequent action. This chapter has been revised three times since the last periodic review in 2018. Any changes in technology, economic conditions, or other factors have changed would have been considered with each of the three revisions. The regulations affect practitioners, not businesses, so there is no impact on small businesses.