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Final Regulation Agency Background Document

Agency name	Board of Nursing, Department of Health Professions
Virginia Administrative Code (VAC) Chapter citation(s)	18VAC90-19
VAC Chapter title(s)	Regulations Governing the Practice of Nursing
Action title	Prohibition on practice of conversion therapy
Date this document prepared	5/18/21

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 (1VAC7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

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.

The Board has amended section 230 to specify that the standard of practice would prohibit a nurse from engaging in conversion therapy with a person under the age of 18. Regulations define conversion therapy as it is defined in § 54.1-2409.5 of the Code of Virginia as amended by the 2020 General Assembly. The goal is to align regulations of the Board with the stated policies and ethics for the profession and with the prohibition in the Code.

Acronyms and Definitions

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

N/A

Statement of Final Agency Action

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.

On May 18, 2021, the Board of Nursing adopted final amendments to 18VAC90-19-10 et seq., Regulations Governing the Practice of Nursing.

Mandate and Impetus

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.

The impetus for the regulatory change was initially legislation that was introduced in the 2018 General Assembly session prohibiting a person licensed by a health regulatory board from engaging in sexual orientation change efforts with a person under 18 years of age. Subsequently a workgroup recommended that affected health regulatory boards consider the promulgation of regulations, and the Board of Nursing issued a Notice of Intended Regulatory action for that purpose.

Subsequently, legislation was introduced and passed by the 2020 General Assembly establishing a definition of conversion therapy and a prohibition on such practice in the Code in Virginia. The impetus of this action is now to include similar language in the grounds for disciplinary action by the Board.

There are no changes to previously reported information.

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 and 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 are promulgated under the general authority of Chapter 24 of Title 54.1 of the Code of Virginia. Section 54.1-2400, which provides the Board of Nursing the authority to promulgate regulations to administer the regulatory system:

§ 54.1-2400 -General powers and duties of health regulatory boards
The general powers and duties of health regulatory boards shall be:

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. ...

The specific Code section establishing a prohibition on conversion therapy is found in:

§ 54.1-2409.5. Conversion therapy prohibited.

A. As used in this section, "conversion therapy" means any practice or treatment that seeks to change an individual's sexual orientation or gender identity, including efforts to change behaviors or gender expressions or to eliminate or reduce sexual or romantic attractions or feelings toward individuals of the same gender. "Conversion therapy" does not include counseling that provides acceptance, support, and understanding of a person or facilitates a person's coping, social support, and identity exploration and development, including sexual-orientation-neutral interventions to prevent or address unlawful conduct or unsafe sexual practices, as long as such counseling does not seek to change an individual's sexual orientation or gender identity.

B. No person licensed pursuant to this subtitle or who performs counseling as part of his training for any profession licensed pursuant to this subtitle shall engage in conversion therapy with a person under 18 years of age. Any conversion therapy efforts with a person under 18 years of age engaged in by a provider licensed in accordance with the provisions of this subtitle or who performs counseling as part of his training for any profession licensed pursuant to this subtitle shall constitute unprofessional conduct and shall be grounds for disciplinary action by the appropriate health regulatory board within the Department of Health Professions.

Purpose

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 specify in regulations the interpretation of the Board that conversion therapy has the potential for significant harm if practiced with persons under the age of 18. The regulations will define the term consistent with accepted usage within the profession and consistent with policy statements by state and national professional organizations.

Substance

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.

The Board has amended section 230 to specify that the standard of practice would prohibit a nurse from engaging in conversion therapy with a person under the age of 18. Regulations define

conversion therapy in section 10 as it is defined in § 54.1-2409.5 of the Code of Virginia as amended by the 2020 General Assembly.

Issues

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.

- 1) The primary advantage to the public is protection for children who might otherwise be subjected to reparative or conversion therapy; the Board does not believe there are disadvantages because practitioners can provide assistance to a person undergoing gender transition or social work services that offers acceptance, support, and understanding of a person or facilitates a person's coping, social support, and identity exploration and development.
- 2) There are no advantages or disadvantages to the agency or the Commonwealth.
- 3) The Director of the Department of Health Professions has reviewed the proposal and performed a competitive impact analysis. The Board is authorized under § 54.1-2400 to *“promulgate regulations in accordance with the Administrative Process Act which are reasonable and necessary to administer effectively the regulatory system.”* Any restraint on competition as a result of promulgating this regulation is a foreseeable result of the statutory obligation of the Board to protect the safety and health of clients/patients in the Commonwealth.

Requirements More Restrictive than Federal

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 applicable federal requirements.

Agencies, Localities, and Other Entities Particularly Affected

Please identify any other state agencies, localities, or other entities particularly affected by the regulatory change. “Particularly affected” are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. “Locality” can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.

Other State Agencies Particularly Affected - None

Localities Particularly Affected - None

Other Entities Particularly Affected - None

Public Comment

Summarize all comments received during the public comment period following the publication of the previous stage, and provide the agency response. Include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. If no comment was received, enter a specific statement to that effect.

Public comment was requested from February 15, 2021 to April 16, 2021; there were no comments submitted. A public hearing was held on March 23, 2021; there were no comments.

Detail of Changes Made Since the Previous Stage

*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. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. * Put an asterisk next to any substantive changes.*

There were no changes to the text since the proposed stage.

Detail of All Changes Proposed in this Regulatory Action

*List all changes proposed in this action and the rationale for the changes. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. * Put an asterisk next to any substantive changes.*

Current chapter-section number	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
10	Sets out definitions for words and phrases used in the Chapter	There is a new definition for “conversion therapy” as any practice or treatment as defined in § 54.1-2409.5 (A) of the Code of Virginia. <i>In the adoption of final regulation, the Board chose to adopt the statutory definition.</i>
230	Sets out the standards of practice for practitioners licensed by the Board	For the purpose of establishing allegations to be included in the notice of hearing, the board has added to Subsection A the following: “ <u>engaging in conversion therapy with a person under 18 years of age</u> ”.

		<p><i>The amendment is consistent with a 2015 position statement from the American Academy of Nursing, in which the Academy stated its support for the numerous professional bodies that have stated opposition to conversion therapy or sexual orientation change interventions. As stated in its guidance document, the Board noted “conversion therapy” or “sexual orientation change efforts” to be services that have the potential to harm patients. Additionally, the amendment is consistent with the prohibition as stated in § 54.1-2409.5, as enacted by the 2020 General Assembly.</i></p>
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