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Proposed Regulation Agency Background Document

Agency name	Board of Counseling, Department of Health Professions
Virginia Administrative Code (VAC) citation(s)	18VAC115-40
Regulation title(s)	Regulations Governing the Certification of Rehabilitation Providers
Action title	Periodic review
Date this document prepared	2/24/20

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.

The intent of the amendments resulting from the periodic review is to update regulations, clarify language, and achieve some consistency among standards of practice and renewal requirements for certified and registered professions.

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.

N/A

Mandate and Impetus

Please identify the mandate for this regulatory change, and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, board decision, etc.). For purposes of executive branch review, "mandate" has the same meaning as defined in Executive Order 14 (as amended, July 16, 2018), "a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."

The impetus for the regulatory change is the periodic review that was filed on July 5, 2018 with a comment period from August 6, 2018 to September 5, 2018.

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.

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 Counseling 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:

- 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.*
- ...*
- 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. ...*

Specific authority for regulation of the profession of counseling is found in Chapter 35 of Title 54.1:

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

In addition to the powers granted in § 54.1-2400, the Board shall have the following specific powers and duties: ...

4. To administer the certification of rehabilitation providers pursuant to Article 2 (§ 54.1-3510 et seq.) of this chapter, including prescribing fees for application processing, examinations, certification and certification renewal....

Article 2. Rehabilitation Providers.**§ 54.1-3510. Definitions.**

As used in this article, unless the context requires a different meaning:

"Certified rehabilitation provider" means a person who is certified by the Board as possessing the training, the skills and the experience as a rehabilitation provider to form an opinion by discerning and evaluating, thereby allowing for a sound and reasonable determination or recommendation as to the appropriate employment for a rehabilitation client and who may provide vocational rehabilitation services under subdivision A 3 of § [65.2-603](#) that involve the exercise of professional judgment.

"Professional judgment" includes consideration of the client's level of disability, functional limitations and capabilities; consideration of client aptitudes, career and technical skills and abilities; education and pre-injury employment; and identification of return-to-work options and service needs which culminate in the determination or recommendation of appropriate employment for the rehabilitation client.

§ 54.1-3513. Restriction of practice; use of titles.

A. No person, other than a person licensed by the Boards of Counseling; Medicine; Nursing; Optometry; Psychology; or Social Work, shall hold himself out as a provider of rehabilitation services or use the title "rehabilitation provider" or a similar title or any abbreviation thereof unless he holds a valid certificate under this article.

B. Subsection A shall not apply to employees or independent contractors of the Commonwealth's agencies and sheltered workshops providing vocational rehabilitation services, under the following circumstances: (i) such employees or independent contractors are not providing vocational rehabilitation services under § [65.2-603](#) or (ii) such employees are providing vocational rehabilitation services under § [65.2-603](#) as well as other programs and are certified by the Commission on Rehabilitation Counselor Certification (CRCC) as certified rehabilitation counselors (CRC) or by the Commission on Certification of Work Adjustment and Vocational Evaluation Specialists (CCWAVES) as Certified Vocational Evaluation Specialists (CVE).

§ 54.1-3514. Certification of existing providers.

The Board of Counseling upon receipt of a completed application and payment of the prescribed fee on or before June 30, 1995, shall issue a certificate to any person who was actively engaged in providing rehabilitation services on January 1, 1994.

§ 54.1-3515. Certification renewal of individuals who became certified under the provisions of § 54.1-3514.

After July 1, 2001, the Board of Counseling shall not renew a certificate to any person who became certified under the provisions of § [54.1-3514](#) without documentation that such person meets the current requirements for certification established by the Board, unless such person provided rehabilitation services for at least two years immediately preceding July 1, 1997, and has done so continuously since that date without interruption and received a passing score on a Board approved examination. The Board of Counseling, pursuant to its authority in this section and in § [54.1-3505](#), shall adopt regulations to implement the 1997 revisions of the law relating to certified rehabilitation providers in 280 days or less of the date of the enactment of such revisions.

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.

Additional standards of conduct and causes for disciplinary action will provide further guidance to licensees 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, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of Changes" section below.

In addition to edits for clarity and updating of terminology, the following changes were adopted:

In section 22, clarify that unresolved disciplinary action in another jurisdiction may be grounds to deny certification, but the board will consider each on a case-by-case basis.

In section 25, require "verification" of any other mental health or health license in another jurisdiction. Documentation is not necessary, provided the verification comes from the other jurisdiction; the only "licenses" the board is concerned about are mental health or health licenses.

In section 26, replace the words "members" with the word "persons" who are in group supervision.

In section 30, change the renewal date from January 31st to June 30th for consistency with renewal for other professions.

In subsection B of section 35, provide examples of "evidence" of continuing ability to perform the functions of a rehabilitation provider that may be required for reinstatement, such as continuing education and/or practice in another state.

In section 38, add the requirement for notification of a name change and change the requirement from 30 to 60 days for submission of information on changes.

In section 50, add the following grounds for disciplinary action that exist in other regulations for the Board of Counseling:

- Conducting one's practice in such a manner so as to make it a danger to the health and welfare of one's clients or to the public;
- Performance of functions outside the board-certified area of competency;
- Intentional or negligent conduct that causes or is likely to cause injury to a client or clients;
- Performance of an act likely to deceive, defraud, or harm the public;
- Failure to cooperate with an employee of the Department of Health Professions in the conduct of an investigation;
- Failure to report evidence of child abuse or neglect as required in § 63.2-1509 of the Code of Virginia, or elder abuse or neglect as required in § 63.2-1606 in the Code of Virginia;
- Knowingly allowing persons under supervision to jeopardize client safety or provide care to clients outside of such person's scope of practice or area of responsibility; and
- Violating any provisions of this chapter, including practice standards set forth in 18VAC115-40-40.

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.

1) The primary advantage to the public is greater accountability by the addition of grounds for disciplinary action if any issues with the practice of rehabilitation providers arise; there are no disadvantages to the public.

2) There are no advantages and 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 (§ [2.2-4000](#) et seq.) which are reasonable and necessary to administer effectively the regulatory system..." The proposed amendments are a foreseeable result of the statute requiring the Board to protect the safety and health of the citizens of the Commonwealth.

Requirements More Restrictive than Federal

Please identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements, or no requirements that exceed applicable federal requirements, 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

Economic Impact

Pursuant to § 2.2-4007.04 of the Code of Virginia, please identify all specific economic impacts (costs and/or benefits), anticipated to result from the regulatory change. When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Please keep in mind that this is change versus the status quo.

Impact on State Agencies

<p><i>For your agency:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including: a) fund source / fund detail; b) delineation of one-time versus on-going expenditures; and c) whether any costs or revenue loss can be absorbed within existing resources</p>	<p>As a special fund agency, the Board must generate sufficient revenue to cover its expenditures from non-general funds, specifically the renewal and application fees it charges to practitioners or entities for necessary functions of regulation. All notifications will be done electronically. There are no on-going expenditures</p>
<p><i>For other state agencies:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures.</p>	<p>There are no costs to other state agencies.</p>
<p><i>For all agencies:</i> Benefits the regulatory change is designed to produce.</p>	<p>No impact</p>

Impact on Localities

Projected costs, savings, fees or revenues resulting from the regulatory change.	None
Benefits the regulatory change is designed to produce.	None

Impact on Other Entities

Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect.	Rehabilitation providers who are required to have Board certification. There is an exemption in the law for “employees or independent contractors of the Commonwealth’s agencies and sheltered workshops providing vocational rehabilitation services, under the following circumstances: (i) such employees or independent contractors are not providing vocational rehabilitation services under § 65.2-603 or (ii) such employees are providing vocational rehabilitation services under § 65.2-603 as well as other programs and are certified by the Commission on Rehabilitation Counselor Certification (CRCC) as certified rehabilitation counselors (CRC) or by the Commission on Certification of Work Adjustment and Vocational Evaluation Specialists (CCWAVES) as Certified Vocational Evaluation Specialists (CVE).”
Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that: a) is independently owned and operated and; b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	There are 230 persons currently certified by the Board as rehabilitation providers. The change in renewal date will affect all, but they will likely benefit from an extension of the renewal date after that effective date of the regulation. The additional grounds for disciplinary action will likely have no effect because there are very few complaints about rehab providers. In FY17, there were two complaints forwarded to the Board for action, and in FY18, there was one.
All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Please be specific and include all costs including, but not limited to: a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change; c) fees; d) purchases of equipment or services; and e) time required to comply with the requirements.	There are no additional costs.
Benefits the regulatory change is designed to produce.	The regulatory changes are primarily for clarity and consistency with other professions under the Board of Counseling.

Alternatives

Please describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. 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 regulatory change.

Since the requirements for certification 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.

Regulatory Flexibility Analysis

Pursuant to § 2.2-4007.1B of the Code of Virginia, please describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the regulatory change.

There are no alternative methods to achieve the intent of protecting the public receiving rehabilitation services.

Periodic Review and Small Business Impact Review Report of Findings

If you are using this form to report the result of a periodic review/small business impact review that is being conducted as part of this regulatory action, and was announced during the NOIRA stage, please indicate whether the regulatory change meets the criteria set out in Executive Order 14 (as amended, July 16, 2018), e.g., is necessary for the protection of public health, safety, and welfare; minimizes the economic impact on small businesses consistent with the stated objectives of applicable law; and is clearly written and easily understandable.

In addition, as required by § 2.2-4007.1 E and F of the Code of Virginia, 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.

This regulation has been reviewed and is consistent with the criteria set out in Executive Order 14. It is necessary to protect public health, safety and welfare; it minimizes the impact on small

businesses and is clearly written and easily understandable. The Board receives no questions or complaints from certification holders, applicants, or the public.

(1) As stated in comments from the professional organizations of rehabilitation providers, the regulations are consistent with the statutory authority and necessary to protect a vulnerable population of clients;

(2) There have been complaints or comments from the public about this regulation;

(3) There have been no comment about the complexity of the regulation; there are several amendments in this action to clarify a few sections;

(4) The regulation does not overlap, duplicate, or conflict with federal or state law or regulation; and

(5) This chapter was last reviewed in 2014 with amendments that were recommended becoming effective January 15, 2016. The profession has not changed substantially in the past five years.

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
International Association of Rehabilitation Professionals (IARP). Va. Chapter	Provided the history behind regulation rehabilitation providers and stated support for the protections offered by the standards of practice outlined in the regulations.	The agency concurs with the comment.
International Association of Rehabilitation Professionals	Stated support for the regulations as concurrent with statutory guidelines and necessary to ensure citizens of the Commonwealth receive assistance from experienced professionals.	The agency concurs with the comment.

Public Participation

Please include a statement that in addition to any other comments on the regulatory change, the agency is seeking comments on the costs and benefits of the regulatory change and the impacts of the regulated community. Also, indicate whether a public hearing will be held to receive comments.

In addition to any other comments, the Board of Counseling is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the agency/board is seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments for the public comment file may do so by mail, email or fax to Elaine Yeatts at elaine.yeatts@dhp.virginia.gov or at 9960 Mayland Drive, Henrico, VA 23233 or by fax at (804) 527-4434.. Comments may also be submitted through the Public Forum feature of the Virginia Regulatory Town Hall web site at: <http://www.townhall.virginia.gov>. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

A public hearing will be held following the publication of this stage 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.

Detail of Changes

Please list all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation.

Current section number	Current requirement	Change, intent, rationale, and likely impact of new requirements
20	Sets the fees for applicants and certified rehabilitation providers	A new fee of \$25 is added for verification of certification. <i>This fee is identical to the fee charged to all other regulants under the Board of Counseling. Since verification of certification is available online, an entity or another jurisdiction has the capability to verify without the rehabilitation provider incurring a fee. On occasion, a paper verification is required so a fee for completing that request is necessary.</i>
22	Sets the criteria for eligibility for certification	Subsection D is added to clarify that the Board has authority to deny certification to an applicant who has unresolved disciplinary action. There is no barrier to certification, but disciplinary actions are reviewed on a case-by-case basis to determine whether they provide grounds for denial.
25	Sets out the application process for certification	Passage of an examination is required by section 28, so the additional requirement for documentation is clarification for the

		<p>applicant to have all required elements of the application in one section.</p> <p>Currently, the regulation requires submission of documentation of a license or certification in another jurisdiction. The proposed regulation changes “documentation” to “verification” so an applicant does not have to submit paper documentation.</p>
26	Sets out the requirements for supervised experience	The word “members” is changed to “persons” as a correction to the section on group instruction.
30	Sets the requirements for annual renewal of certification	The renewal date is changed from January 31 to June 30 for consistency with all other professions related by the Board. <i>All certificate holders will be given at least 12 months of renewed certification after the effective date of the regulation. For example, if the final regulation becomes effective January 1 of 2021, rehab providers would not renew again until June 30 of 2022.</i>
35	Sets the requirements for reinstatement of certification	Currently, regulations provide that a person applying for reinstatement must submit “evidence regarding the continued ability to perform the functions within the scope of practice of certification.” The proposed regulation will offer examples of the evidence that may be provided – continuing education, practice in another jurisdiction or maintenance of national certification.
38	Provides a requirement to notify the Board of a change of address or a name change	The requirement to submit a change of address is amended from 30 to 60 days for consistency with other professions regulated by the Board. The proposed regulation also adds a requirement to notify the Board of a name change so records can be maintained accurately for renewal notification, newsletters, etc.
50	Sets out grounds for disciplinary action or for denial of certification	<p>The grounds for action have not been recently updated. In proposed regulations, they have been made consistent with other professions to include:</p> <ul style="list-style-type: none"> • Attempting to procure or maintain certification by fraud or misrepresentation; • Conducting one’s practice in a manner to be a danger to the health and welfare of clients or the public; • Performance of functions outside the board-certified area of competency; • Intentional or negligent conduct that causes or is likely to cause injury to a client; • Performance of an act likely to deceive, defraud, or harm the public;

		<ul style="list-style-type: none">• Failure to cooperate with an employee of the Department of Health Professions in the conduct of an investigation;• Failure to report evidence of child abuse or neglect as required in § 63.2-1509 of the Code of Virginia, or elder abuse or neglect as required in § 63.2-1606 of the Code of Virginia;• Knowingly allowing a person under supervision to jeopardize client safety; or• Violating any provisions of this chapter, including practice standards.
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