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## Final Regulation Agency Background Document

<b>Agency name</b>	Board of Medicine, Department of Health Professions
<b>Virginia Administrative Code (VAC) citation(s)</b>	18VAC85-150
<b>Regulation title(s)</b>	Regulations Governing the Practice of Behavior Analysis
<b>Action title</b>	Increase in continuing education hours & CE credit for volunteer practice
<b>Date this document prepared</b>	10/27/16

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

### Brief summary

*Please provide a brief summary of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.*

The Advisory Board on Behavior Analysis recommended that the Board of Medicine amend renewal requirements to match the continuing education required by the Behavior Analysis Certification Board. The amendments would change continuing education requirements from 24 hours for the biennial renewal to 32 hours for behavior analysts and from 16 to 20 hours for assistant behavioral analysts. Four of those hours must be in ethics relating to professional practice.

In this final action, the Board of Medicine has also adopted an amendment to allow behavioral analysts and assistant behavioral analysts to count two of the hours required for biennial renewal to be satisfied through delivery of professional services, without compensation, to low-income

individuals receiving health services through a local health department or a free clinic organized in whole or primarily for the delivery of those services. One hour of continuing education may be credited for three hours of providing such volunteer services, as documented by the health department or free clinic. Chapter 82 of the 2016 General Assembly has mandated that health regulatory boards promulgate regulations to allow some volunteer service time to count towards meeting some of a licensee’s continuing education requirements.

**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.*

BACB = Behavior Analysis Certification Board

**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.*

On October 20, 2016, the Board of Medicine adopted amendments to 18VAC85-150-10 et seq., Regulations Governing the Practice of Behavior Analysis.

**Legal basis**

*Please identify the state and/or federal legal authority to promulgate this proposed regulation, including: 1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable; and 2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person’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 Medicine the authority to promulgate regulations to administer the regulatory system and a mandate for credit for volunteer practice:

**§ 54.1-2400 -General powers and duties of health regulatory boards**

*The general powers and duties of health regulatory boards shall be:*

...

6. To promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) *that are reasonable and necessary to administer effectively the regulatory system, which shall include provisions for the satisfaction of board-required continuing education for individuals registered, certified, licensed, or issued a multistate licensure privilege by a health regulatory board through delivery of health care services, without compensation, to low-income individuals receiving health services through a local health department or a free clinic organized in whole or primarily for the delivery of those health services.* 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.).

## Purpose

*Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Describe the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.*

At the time licensure requirements were established, the continuing competency requirements for renewal of license were set to mirror the requirements for maintenance of certification with the Behavior Analyst Certification Board (BACB). Certification by the BACB is required for initial licensure, and although licensees are not required to maintain current certification to renew a license, they are encouraged to do so.

In 2013, the BACB announced that, beginning in December of 2014, the requirements for maintenance of certification would be changed from a three-year cycle to a two-year cycle and the hourly requirement would be increased. The proposed regulations for behavior analysts and assistant behavior analysts are consistent with the continuing competency requirements of the certification board, to include four hours each biennium in ethics relating to professional practice. The BACB offers several types of continuing education that are acceptable for certification and for renewal of licensure. With the additional hours, notably the hours of ethics, licensees may be better prepared to handle situations that they encounter in their practice and more knowledgeable about modalities and treatments that will improve outcomes and protect the health and safety of their clients.

The purpose of the amended regulation in the final action is compliance with the mandate of the General Assembly and to provide an incentive for licensees to volunteer professional services to free clinics or public health centers. While a licensee can satisfy two hours of continuing education with six hours of volunteer service, he or she is still required to have 18 to 32 hour of approved continuing education necessary to acquire new knowledge and skills. Therefore, public health is served by a potential increase in badly-needed volunteer service for health care; but public safety is not sacrificed by eliminating most or all of the continuing education hours required for renewal.

## Substance

*Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both.*

The amendments would change continuing education requirements from 24 hours for the biennial renewal to 32 hours for behavior analysts and from 16 to 20 hours for assistant behavior analysts. Four of those hours must be in ethics relating to professional practice.

An amendment to the proposed regulations will allow behavior analysts and assistant behavior analysts to count two hours of the hours required for biennial renewal to be satisfied through delivery of professional services, without compensation, to low-income individuals receiving health services through a local health department or a free clinic organized in whole or primarily for the delivery of those services. One hour of continuing education may be credited for three hours of providing such volunteer services, as documented by the health department or free clinic.

### Issues

*Please identify the issues associated with the proposed regulatory action, 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, please indicate.*

- 1) The primary advantage to the public would be more knowledgeable behavior analysts and assistant behavior analysts who would have more hours of continuing education to keep them informed about new modalities and theories of behavior analysis and specific hours relating to professional ethics. The advantage to the public of the CE credit for volunteer practice amendment is the incentive given for polysomnographic technologists to volunteer their services in exchange for credit towards meeting continuing education requirements. There are no disadvantages to the public.
- 2) There are no advantages or disadvantages to the Commonwealth or the agency.
- 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.*” There is no restraint on competition as a result of promulgating this regulation.

### Requirements more restrictive than federal

*Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include 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 statement to that effect.*

There are no applicable federal requirements.

### Localities particularly affected

*Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.*

There are no localities particularly affected.

### Family impact

*Please assess the impact of this regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.*

Autism has a distinct impact on the family, so to the extent treatment can be improved with new information and modalities, the family is positively affected by the proposed regulation.

### Changes made since the proposed stage

*Please list all changes that made to the text of the proposed regulation and the rationale for the changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. \*Please put an asterisk next to any substantive changes.*

Section number	Requirement at proposed stage	What has changed	Rationale for change
100	Changed the number of hours required for biennial renewal for consistency with BACB certification	The Board added: <i>Up to two continuing education hours may be satisfied through delivery of behavioral analysis services, without compensation, to low-income individuals receiving services through a local health department or a free clinic organized in whole or primarily for the delivery of health services. One hour of continuing education may be credited for three hours of providing such volunteer services. For the purpose of continuing education credit for voluntary service, the hours shall be approved and documented by the health department or free clinic.</i>	The Board is mandated by 54.1-2400 (6) to adopt regulations that allow a licensee to count some of the hours of volunteer practice for continuing education. Since section 100 was already being amended, the Board included the language for CE credit in this final action.

### Public comment

*Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate.*

Please distinguish between comments received on Town Hall versus those made in a public hearing or submitted directly to the agency or board.

Commenter	Comment	Agency response
23 commenters	All supported the increase in continuing education hours for consistency with BACB requirements. Twenty-one of the commenters also recommended that regulations be amended to require maintenance of BACB certification for renewal of licensure.	The agency concurred with support of the increased hours but did not further amend regulations to require BACB certification. The maintenance of a professional credential is encouraged by consistency in the CE hours but is not mandated to maintain a license.

**All changes made in this regulatory action**

Please list all changes that are being proposed and the consequences of the proposed changes. Describe new provisions and/or all changes to existing sections. Explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation

Current section number	Current requirement	Proposed change and rationale
90	Sets requirements for reactivation or reinstatement	Increases the number of hours to 16 per year for a behavior analyst and 10 hours for an assistant behavior analyst. <i>The change is for consistency with the proposed requirement for CE hours for biennial renewal. Additionally, there are a lesser number of hours required for the assistant in the proposed regulation, so the amendment actually represents a reduction in the regulatory burden for that group of licensees.</i>
100	Sets requirements for continuing education	The amendment would increase the hours from 24 to 32 for the behavior analyst and from 16 to 20 for the assistant. Additionally, four of the required hours must be related to ethics in the practice of the profession. <i>The change is made to keep behavior analyst regulations consistent with the requirements for maintenance of BACB certification. When new regulations were adopted for licensure of these professions, there was strong support for requiring maintenance of BACB certification for renewal of licensure. BACB certification is required for initial licensure, but maintenance of certification requires an additional fee to the BACB. The Board chose to mirror the continuing education requirements to encourage but not require maintenance of professional certification. With the BACB change in CE requirements beginning December of 2014, that consistency no longer exists. The behavior analysis community strongly supports the consistent requirements between the BACB and the Board.</i> The Board added to the proposed amendments in

		<p>subsection A: Up to two continuing education hours may be satisfied through delivery of behavioral analysis services, without compensation, to low-income individuals receiving services through a local health department or a free clinic organized in whole or primarily for the delivery of health services. One hour of continuing education may be credited for three hours of providing such volunteer services. For the purpose of continuing education credit for voluntary service, the hours shall be approved and documented by the health department or free clinic.</p> <p><i>The intent of the Board was to comply with a statutory mandate to allow credit for volunteer hours. The criteria and settings for such volunteer services are specified in § 54.1-2400 (6). The ratio of one hour for three hours of service was adopted to encourage licensees to donate a block of time to the clinics or health department. If a licensee volunteers at a local health department or free clinic, he or she would be able to satisfy two of the 20 hours of continuing education required for renewal.</i></p>
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