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Emergency Regulation and Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Department of Behavioral Health and Developmental Services
Virginia Administrative Code (VAC) citation(s)	12 VAC35-105
Regulation title(s)	Rules and Regulations For Licensing Providers by the Department of Behavioral Health and Developmental Services
Action title	Adding OTs and OTAs to definitions of qualified professionals
Date this document prepared	September 22, 2017

This form is used when an agency wishes to promulgate an emergency regulation (to be effective for up to eighteen months), as well as publish a Notice of Intended Regulatory Action (NOIRA) to begin the process of promulgating a permanent replacement regulation. 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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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.

This regulatory action is brought under the emergency 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 retardation professionals, and qualified paraprofessionals in mental health. The State Board of Behavioral Health and Developmental Services, in Chapter 136, is 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).

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 therapists.
- "QMHP" means a qualified mental health professional.
- "QMHP" 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.
- "QMRP" means qualified mental retardation professional.
- "State Board" means the State Board of Behavioral Health and Developmental Services.

Emergency Authority

The APA (Code of Virginia § 2.2-4011) states that agencies may adopt emergency regulations in situations in which Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment, and the regulation is not exempt under the provisions of subdivision A. 4. of § 2.2-4006. Please explain why this is an emergency situation as described above, and provide specific citations to the Code of Virginia or the Appropriation Act, if applicable.

Chapters 136 and 418 of the 2017 Acts of Assembly. At the regular meeting held on October, 4, 2017, the State Board voted on the draft language and to initiate the Emergency/NOIRA.

Legal basis

Other than the emergency authority described above, please identify the state and/or federal legal authority to promulgate this proposed regulation, including: 1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and 2) the promulgating entity, i.e., agency, board, or person.

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.

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

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 retardation 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).

Need

Please describe the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, delineate any potential issues that may need to be addressed as the regulation is developed.

Chapter 418 of the 2017 Acts of Assembly requires 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 see below chart for changes to existing sections. DBHDS has determined that these changes will be beneficial to the population served because the requirement of QMHPs registering with the Department of Health Professional will ensure professional oversight of education, experience, and scope of practice. Also, the addition of OTs and OTAs will help develop, improve, sustain, or restore the independent to any person who has an injury, illness, disability, or psychological dysfunction.

For changes to existing regulations, use this chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, 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</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

	<p><i>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.</i></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;</p>	<p>from 18VAC115-80-20:</p> <ul style="list-style-type: none"> ○ <u>'A QMHP-A shall provide such services as an employee or independent contractor of the DBHDS or a provider licensed by the DBHDS.'</u>
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		<p>(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 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: (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, QMRPs and QMHPPs are defined only in the DBHDS regulation as:</p> <p>Qualified Mental Retardation Professional (QMRP)" means a person who possesses at least one year of documented experience working directly with individuals who have mental retardation (intellectual disability) or other developmental disabilities and</p>	<ul style="list-style-type: none"> Amend to read: "Qualified Mental Health Professional-Eligible (QMHP-E)" means a person <u>receiving supervised training in order to qualify as a QMHP in accordance with 18VAC115-80 and who is registered with the Board of Counseling.</u> 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
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		<p>one of the following credentials: <i>(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, special education, rehabilitation counseling, or psychology.</i></p> <p>"Qualified Paraprofessional in Mental Health (QPPMH)" means a person who must, at a minimum, meet one of the following criteria: <i>(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).</i></p>	<p>same requirement for other degrees listed).</p> <p>In the definition of QMHPP:</p> <ul style="list-style-type: none"> • Insert OTAs • 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).
590		<p>In C 6 of the subdivision, currently DBHDS regulations state: <i>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.</i></p>	<p>After 'shall be provided by a QMHP-A'</p> <ul style="list-style-type: none"> • Insert: '<u>, 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.</u>'

1370		<p>In A 2 of the subdivision, it currently states: <i>QMHP-Adult and mental health professional standards:</i> <i>a. At least 80% of the clinical 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.</i></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 psychiatrist, shall be <u>QMHP-As</u> and shall be qualified to provide the services described in 12VAC35-105-1410.
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Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also describe the process by which the agency has considered or will consider other alternatives for achieving the need in the most cost-effective manner.

There are no alternatives to this regulatory mandate.

Public participation

Please indicate whether the agency is seeking comments on the intended regulatory action, to include ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public meeting is to be held to receive comments. Please also indicate whether a Regulatory Advisory Panel or a Negotiated Rulemaking Panel has been used in the development of the emergency regulation and whether it will also be used in the development of the permanent regulation.

The agency is seeking comments on this regulatory action, including but not limited to: ideas to be considered in the development of this proposal, the costs and benefits of the alternatives stated in this background document or other alternatives, and the potential impacts of the regulation.

The agency is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include: projected reporting, recordkeeping, and other administrative costs; the probable effect of the regulation on affected small businesses; and the description of less intrusive or costly alternatives for achieving the purpose of the regulation.

Anyone wishing to submit comments may do so via the Regulatory Town Hall website (<http://www.townhall.virginia.gov>), or by mail, email, or fax to **Cleopatra L. Booker, Psy.D., Director, Office of Licensing, Virginia Department of Behavioral Health and Developmental Services, P.O. Box 1797, 1220 Bank Street, Richmond, VA 23218-1797, cleopatra.booker@dbhds.virginia.gov, phone (804) 786-1747, fax (804) 692-0066.** Written comments must include the name and address of the commenter. In order to be considered, comments must be received by midnight on the last day of the public comment period.

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

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.

The regulation does not have an impact on the family or family stability.

Periodic review/small business impact review announcement

If you wish to use this emergency/NOIRA to announce a periodic review (§ 2.2-4017 & EO-17 (2014)) and a small business impact review (§ 2.2-4007.1) of this regulation, keep the following text. Modify as necessary for your agency. Otherwise, delete this section.

The agency is not conducting a periodic review through this action.