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Final Regulation Agency Background Document

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| Agency name | Board of Counseling, Department of Health Professions |
| Virginia Administrative Code (VAC) citation(s) | 18VAC115-70-10 et seq. |
| Regulation title(s) | Regulations Governing the Registration of Peer Recovery Specialists |
| Action title | New chapter |
| Date this document prepared | 6/4/19 |

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.

Regulations for registration of peer recovery specialists are promulgated pursuant to a mandate of Chapters 418 and 426 of the 2017 Acts of the Assembly. Regulations establish the fees required for registration and renewal of registration and specify the qualification for registration, which is evidence of meeting the requirements set out in regulations of the Department of Behavioral Health and Developmental Services. In order to maintain registration, there is a requirement of eight hours of continuing education with a minimum of one hour in ethics. Standards of practice for registered peer recovery specialists include practicing within one's competency area, practicing in a manner that does not endanger public health and safety, maintaining confidentiality, and avoiding dual relationships that would impair objectivity and increase risk of client exploitation. A violation of standards of practice or of applicable law or regulation provides grounds for disciplinary action by the Board.

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.

DBHDS =Virginia Department of Behavioral Health and Developmental Services
DMAS = Department of Medical Assistance Services
VDH = Virginia Department of Health

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 May 31, 2019, the Board of Counseling adopted final regulations for 18VAC115-70-10 et seq., Regulations Governing the Registration of Peer Recovery Specialists.

Mandate and Impetus

Please 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.

There were no changes to the previously reported statutory mandate.

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 of the Board of Counseling are promulgated under the general authority of Title 54.1, Chapter 24 of the Code of Virginia.

Chapter 24 establishes the general powers and duties of health regulatory boards including the responsibility to promulgate regulations in accordance with the Administrative Process Act which are reasonable and necessary.

§ 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. ...*

The definition of a peer recovery specialist is found in:

§ [54.1-3500](#). Definitions.

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

"Registered peer recovery specialist" means a person who by education and experience is professionally qualified and registered by the Board to provide collaborative services to assist individuals in achieving sustained recovery from the effects of addiction or mental illness, or both. A registered peer recovery specialist shall provide such services as an employee or independent contractor of the Department of Behavioral Health and Developmental Services, a provider licensed by the Department of Behavioral Health and Developmental Services, a practitioner licensed by or holding a permit issued from the Department of Health Professions, or a facility licensed by the Department of Health.

In addition, the Board has specific statutory authority to promulgate regulations for registration of peer recovery specialists in:

§ [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:...

10. *To promulgate regulations for the registration of peer recovery specialists who meet the qualifications, education, and experience requirements established by regulations of the Board of Behavioral Health and Developmental Services pursuant to § [37.2-203](#).*

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.

The intent of the proposed regulation, replacing an emergency regulation currently in effect, is to establish a registry of peer recovery specialists, so there is some accountability for their practice and a listing of qualified persons for the purpose of reimbursement by DMAS. It has been shown that the availability of a peer recovery specialist can drastically increase the willingness of people struggling with addiction to seek treatment.

DBHDS has recently begun utilization of "certified peer recovery specialists" for work with individuals who are in recovery from mental health and substance use disorders. This regulation will ensure that there is a health regulatory board (Counseling) responsible for registration of peer recovery specialists and for taking disciplinary action if necessary. Peer recovery specialists who are not registered would still be able to provide peer services, but would not be able to be reimbursed by DMAS.

Peer recovery specialists use their life experiences, including their own recovery, to provide effective support for others struggling with mental health or substance use disorders. The legislation and subsequent regulations are intended to address concerns jointly expressed by the Department of Health Professions (DHP), the Department of Behavioral Health and Developmental Services (DBHDS), and the Department of Medical Assistance Services (DMAS) about the lack of oversight and accountability for individuals who are providing mental health or substance abuse services, but who are not responsible to a health regulatory board with authority to take disciplinary action.

By requiring a person who works as a registered peer recovery specialist in a program approved by DBHDS, or under a licensee of VDH or DHP, to be registered by the Board of Counseling, individuals can be disciplined and removed from the registry and no longer be employed in that capacity. This will result in greater protection for the public and a reduction in the possibility of abuse and fraud in Medicaid-funded programs.

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.

Final regulations replace emergency regulations, which became effective on December 18, 2017 and are due to expire on December 17, 2019 (with a six-month extension). Regulations establish definitions used in the chapter, fees charged to applicants and regulants, requirements for initial registration and renewal of registration, to include eight hours of continuing education with one hour devoted to ethics in practice. There are standards of practice similar to all counseling-related professions and grounds for disciplinary action or denial of registration.

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 of the amendment is more assurance of competency and accountability for peer recovery specialists who are increasingly important practitioners in working with persons who have substance abuse issues. There are no disadvantages.
- 2) There are no advantages or disadvantages to 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.”
The increased accountability are the foreseeable result of the statute requiring the Board to protect the health and safety of patients in the Commonwealth.

Requirements More Restrictive than Federal

Please 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 list all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any other state agencies, localities, or other entities that are particularly affected by the regulatory change. If there are no changes to previously-reported information, include a specific statement to that effect.

Other State Agencies Particularly Affected - the availability of peer recovery specialists has an impact on the work of DBHDS, DMAS and VDH in the efforts to address substance misuse and the opioid crisis.

Localities Particularly Affected – None in particular

Other Entities Particularly Affected - None

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.

There was a public comment period from February 4, 2019 to April 5, 2019; a public hearing was conducted on February 8, 2019. There were no comments from the public. However, representatives from DBHDS met with staff of the Board to review the proposed regulations and recommend some changes for greater consistency with the work of that agency with peer recovery specialists.

Detail of Changes Made Since the Previous Stage

Please 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. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. * Please put an asterisk next to any substantive changes.

| New chapter-section number, if applicable | New requirement from previous stage | Updated new requirement since previous stage | Change, intent, rationale, and likely impact of updated requirements |
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| Chapter 70, Section 60 | Requirement for 8 hours of CE for renewal with one hour of courses in ethics | Increase of one hour in ethics for total of two hours | The change was requested by DBHDS because it is felt that ethical practice and boundary issues are critically important for peers to understand and are most likely to be the causes of complaints and subsequent discipline by the Board. |
| Chapter 70, Section 60 | Subsection B lists the organizations, associations or institutions that are approved to provide continuing education | There is a reordering of the listing to reflect those entities a peer recovery specialist is most likely to use for CE. There are also additions and amendments to the listing. | The changes were requested by DBHDS. They are: 1) addition of "mental health" to licensed health facilities that may be providers of CE so it includes facilities licensed by DBHDS; 2) addition of "national or state recovery-oriented association of organization recognized by the profession" to include a number of entities that would otherwise not be approved; 3) moving of previous #10 and #12 to new #3 and #4 because they are more likely to provide CE for peers; 5) clarifying that DBHDS does not approve agencies or organization to provide CE but does approve certain ones as certifying bodies for peer recovery specialists; and 6) addition of "regionally accredited colleges and universities" to allow a peer who is expanding his education to count those courses for his CE. |

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| Chapter 70, Section 70 | Sets the standards of practice for peer recovery specialists | Amends subsection B, #7 to add documentation if it is the decision of the client to terminate a relationship | The amendment was requested by DBHDS because the current regulation only addresses documentation of a decision by the peer to terminate but did not address the situation in which it is the client that makes that decision. In either case, the client record should document the steps taken and the need for the termination. |
| Chapter 70, Section 70 | Sets the standards of practice for peer recovery specialists | Amends subsection C, #4 to delete the word "treatment" and substitute "the recovery, resiliency, and wellness" plan. | Peer recovery specialists are not authorized to do "treatment." The plan for a client of a peer would be one leading to recovery, resiliency, and wellness, so that is the more appropriate terminology. The amendment was requested by DBHDS. |
| Chapter 70, Section 80 | Sets the grounds for disciplinary action | Amends #4 to delete the word "qualified" | The intent of that provision is to state that it is a possible violation to aid or abet another mental health professional in violation of a provision of law. The inclusion of the word "qualified" limited the provision to another specific profession (qualified mental health professionals), so an amendment is necessary to clarify the original intent. The amendment was requested by DBHDS. |

Detail of All Changes Proposed in this Regulatory Action

*Please list all changes proposed in this action and the rationale for the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. * Please put an asterisk next to any substantive changes.*

| Section number | Proposed requirements | Other regulations and law that apply | Intent and likely impact of proposed requirements |
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| 10 | Establishes definitions for words and terms used in the Chapter, including mental health professional, peer recovery specialist, and registered peer recovery specialist | §§ 54.1-2400 & 54.1-3500 12VAC35-250 | Words and terms are defined in conformity to definitions found in the Code |
| 20 | Establishes fees to be charged to applicants and registrants, including a registration or renewal fee of \$30 | §§ 54.1-2400 and 54.1-113 | Fees are consistent with other registered professions and are minimally intended to offset |

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| | | | costs associated with registration |
| 30 | Sets a requirement for a registrant to maintain a current name and address | § 54.1-2400 | All current information required for notifications to registrants must be maintained with the Board. |
| 40 | Sets forth the requirements for registration, including submission of an application and fee and evidence of meeting requirements established in regulations of DBHDS. | §§ 54.1-2400 & 54.1-3505 12VAC35-250 | The qualifications for registration are determined by DBHDS in its regulations. |
| 50 | States that renewal of registration is annual on or before June 30 of each year. | §§ 54.1-2400 | The renewal cycle is consistent with all certified and licensed professions under the Board. |
| 60 | <p>Sets forth the continued education requirements for renewal to include eight contact hours with a minimum of one hour in ethics</p> <p>Subsection A lists the content areas for continuing competency activities.</p> <p>Subsection B lists the organization, associations, or institutions that are approved to provide continuing education.</p> <p>Subsection C exempts newly registered peers from CE for the first renewal.</p> <p>Subsection D allows the Board to grant an extension for up to one year for good cause shown.</p> <p>Subsection E allows the Board to grant an exemption for circumstances beyond the control of the peer.</p> <p>Subsection F requires maintenance of documentation for three years.</p> <p>Subsection G authorizes an audit of registrants and specifies the documentation required.</p> <p>Subsection H specifies that CE hours required by a disciplinary order may not be counted towards the annual requirement.</p> | §§ 54.1-2400 & 54.1-103 12VAC35-250 | Continuing education is a requirement specified in regulations of DBHDS; subject matter content is also consistent with the areas required in 12VAC35-250-50. Allowances for the first renewal, extensions or exemptions are consistent with those of other professions. |
| 70 | Sets out the standards of practice for a registered peer recovery specialist practicing within one’s competency area, practicing in a manner that does not endanger public health and safety, maintaining confidentiality, and avoiding dual relationships that would impair objectivity and increase risk of client exploitation. | §§ 54.1-2400 & 54.1-3505 12VAC35-250 | The standards of conduct are the same set for other mental health professions and emphasize the need for professionalism, |

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| | | | confidentiality, and safety in practice. |
| 80 | Establishes grounds for disciplinary action or denial of registration including conviction of a felony, violation of law or regulation, fraud or misrepresentation, practicing in a manner to be a danger to the health and welfare of a client, and functioning outside one’s competency or scope of practice | §§ 54.1-2400 & 54.1-111 | Likewise, the grounds for disciplinary action or denial of registration are the same as those for other professions under the Board. |
| 90 | Establishes the requirements for reinstatement after a disciplinary action. | §§ 54.1-2400 | Requirements for reinstatement are necessary to ensure that the registrant is qualified and competent to return to practice. |

Changes to the Emergency regulations

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| 40 – Requirements for registration | There is an additional requirement for submission of a current report from NPDB, the national practitioner data bank. | In reviewing applicants for peer recovery specialist, it has been noted that a small number of persons held a license in Virginia or another state. If that license is current, registration as a peer recovery specialist is unnecessary. However, if that license has been disciplined or suspended, there may be grounds to deny registration as a peer recovery specialist. In order to have the information necessary to determine whether such grounds exist, it is necessary to have a NPDB report. The applicant will be charged \$4 by the data bank for requesting a report be sent to the Board. |
| 80 – Grounds for disciplinary action or denial of registration | Number 2 was amended to add “attempting to procure” a registration by fraud or misrepresentation and deletion of including submission of an application or applicable board forms | The amendment was recommended by staff because it is more inclusive of any information that may be submitted by fraud or |

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| | | misrepresentation in an attempt to obtain registration. |
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