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Notice of Intended Regulatory Action (NOIRA) 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	6/7/19

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 VAC 7-10), 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 the subject matter, intent, and goals of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an 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.

The Board will consider whether the addition of some hours of continuing education are necessary to ensure continued competency and will also add grounds for disciplinary actions that are found in all other chapters but are missing in Chapter 40.

Acronyms and Definitions

Please define all acronyms or technical definitions used in the Agency Background Document.

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the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."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 describe the specific reasons why the agency has determined that this regulation is essential to protect the health, safety, or welfare of citizens. In addition, please explain any potential issues that may need to be addressed as the regulation is developed.

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 that are being considered, the substantive changes to existing sections that are being considered, or both.

In addition to edits for clarity and updating of terminology, the following changes will be considered:

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 25, specify that a person who is applying for certification based on national certification or certification by another state, pursuant to subsection C of 18VAC115-40-22, must provide documentation of that certification.

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

In section 30, the board will consider adding some hours of continuing education for renewal, consistent with other registered or certified professions under the board. The board will seek public comment on the intent to add a CE requirement.

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

In subsection B of section 30, the board will consider what “evidence” of continuing ability to perform the functions of a rehabilitation provider should be required for reinstatement, such as continuing education and/or practice in another state.

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

In section 50, the board will consider adding 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.

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.

Periodic Review and

Small Business Impact Review Announcement

This NOIRA is not being used to announce a periodic review or a small business impact review; this NOIRA is the result of the Board's periodic review.

Public Participation

Please indicate how the public should contact the agency to submit comments on this regulation, including ideas to assist the agency in the development of the regulation and the costs and benefits of the alternatives stated in this notice or other alternatives.

Also, indicate whether a public hearing is to be held to receive comments. Please include one of the following choices: 1) a panel will be appointed and the agency's contact if you're interested in serving on the panel is _____; 2) a panel will not be used; or 3) public comment is invited as to whether to use a panel to assist in the development of this 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 Townhall website , www.townhall.virginia.gov, or by mail, email or fax to Elaine Yeatts, Agency Regulatory Coordinator, 9960 Mayland Drive, Henrico, VA 23233 or elaine.yeatts@dhp.virginia.gov or by fax to (804) 527-4434. Written comments must include the name and address of the commenter. In order to be considered comments must be received by 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.

A regulatory panel will not be used to develop the proposed regulation, which will be drafted by the Regulatory Committee of the Board.