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Fast-Track Regulation Agency Background Document

Agency name	Board of Psychology, Department of Health Professions
Virginia Administrative Code (VAC) Chapter citation(s)	18VAC125-30
VAC Chapter title(s)	Regulations Governing the Certification of Sex Offender Treatment Providers
Action title	Periodic review amendments
Date this document prepared	11/9/20

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 (1VAC7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

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.

As a result of a periodic review of this chapter conducted by a Regulatory Advisory Panel, the Board amended 18VAC125-30 by: 1) clarifying and updating requirements and language consistent with current practice; 2) eliminating the need for reference letters with an application and substituting a report from the National Practitioner Data Bank and verification of a license from another board; 3) providing for acceptance of supervised experience obtained in another state; 4) adding an allowance for exceptions or exemptions for continuing education requirement; and 5) expanding the standards of practice and grounds for disciplinary action for consistency with other boards and professions.

Acronyms and Definitions

Define all acronyms used in this form, and any technical terms that are not also defined in the "Definitions" section of the regulation.

CSOTP = certified sex offender treatment provider

Statement of Final Agency Action

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 27, 2020, the Board of Psychology adopted amendments for 18VAC125-30-10 et seq., Regulations Governing the Certification of Sex Offender Treatment Providers by a fast-track action.

Mandate and Impetus

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, or board decision). 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."

As required by Virginia Code § 2.2-4012.1, also explain why this rulemaking is expected to be noncontroversial and therefore appropriate for the fast-track process.

This action is the result of a comprehensive periodic review of Chapter 20. A notice of periodic review was published on March 16, 2020 the Virginia Regulatory Townhall and comment accepted until April 16, 2020. Notice went to 125 users for the Board on Townhall and was also provided to the Public Participation Guidelines notification list for the Board. No public comment was received. The amended regulations were developed by persons with expertise as sex offender treatment providers; they do not expect them to be controversial.

The Board will provide copy of the amended regulation at the beginning of the comment period to CSOTPs to give them the opportunity to express concerns or objections about a fast-track action.

Legal Basis

Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia and Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.

Regulations of the Board of Psychology 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:*

6. 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. 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 statutory powers and duties of the Board of Psychology relating to regulation of certified sex offender providers are found in:

§ 54.1-3605. Powers and duties of the Board.

In addition to the powers granted in other provisions of this title, the Board shall have the following specific powers and duties:

- 1. To cooperate with and maintain a close liaison with other professional boards and the community to ensure that regulatory systems stay abreast of community and professional needs.*
- 2. To conduct inspections to ensure that licensees conduct their practices in a competent manner and in conformance with the relevant regulations.*
- 3. To designate specialties within the profession.*
- 4. To issue a temporary license for such periods as the Board may prescribe to practice psychology to persons who are engaged in a residency or pursuant to subdivision 7 of § 54.1-3601.*
- 5. To promulgate regulations for the voluntary certification of licensees as sex offender treatment providers.*
- 6. To administer the **mandatory certification of sex offender treatment providers for those professionals who are otherwise exempt from licensure under subdivision 4 of §§ 54.1-3501, 54.1-3601 or § 54.1-3701** and to promulgate regulations governing such mandatory certification. The regulations shall include provisions for fees for application processing, certification qualifications, certification issuance and renewal and disciplinary action.*
- 7. To promulgate regulations establishing the requirements for licensure of clinical psychologists that shall include appropriate emphasis in the diagnosis and treatment of persons with moderate and severe mental disorders.*

§ 54.1-3611. Restriction of practice; use of titles.

No person, including licensees of the Boards of Counseling; Medicine; Nursing; Psychology; or Social Work, shall claim to be a certified sex offender treatment provider unless he has been so certified. No person who is exempt from licensure under subdivision 4 of §§ 54.1-3501, 54.1-3601 or § 54.1-3701 shall hold himself out as a provider of sex offender treatment services unless he is certified as a sex offender treatment provider by the Board of Psychology.

Purpose

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.

Treatment of sex offenders requires special training and expertise. The goal is to treat the offender to avoid recidivism and to also protect the public. The Board determined that additional standards of practice were necessary to ensure a certified provider could be held accountable for unprofessional conduct similar to any other mental health provider. Therefore, the regulation is absolutely necessary for public health, safety, and welfare.

Substance

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.

As a result of a periodic review of this chapter conducted by a Regulatory Advisory Panel, the Board amended 18VAC125-30 by: 1) clarifying and updating requirements and language consistent with current practice; 2) eliminating the need for reference letters with an application and substituting a report from the National Practitioner Data Bank and verification of a license from another board; 3) providing for acceptance of supervised experience obtained in another state; 4) adding an allowance for exceptions or exemptions for continuing education requirement; and 5) expanding the standards of practice and grounds for disciplinary action for consistency with other boards and professions.

Issues

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 amendments is greater protection for the public and for the clients who receive treatment with through enhanced and clarified standards of practice and grounds for disciplinary action. 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."* Any restraint on competition as a result of promulgating this regulation is a foreseeable result of the statutory obligation of the Board to protect the safety and health of clients/patients in the Commonwealth.

Requirements More Restrictive than Federal

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 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 - None

Localities Particularly Affected - None

Other Entities Particularly Affected - None

Economic Impact

Pursuant to § 2.2-4007.04 of the Code of Virginia, 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. 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>There are no costs to the state for implementation or enforcement; all funding for the Board is derived from fees charged to applicants and licensees.</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 agencies</p>
<p><i>For all agencies:</i> Benefits the regulatory change is designed to produce.</p>	<p>There may be a benefit to agencies that utilize sex offender treatment providers by having</p>

	clearer standards of practice so the Board has more explicit authority to discipline a CSOTP.
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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.	Certified sex offender treatment providers
Agency's best estimate of the number of such entities that will be affected. 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 437 persons certified as sex offender treatment providers It is unknown how many practices would constitute a small business. Most CSOTP are employed by government agencies or are contracted by court systems.
All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. 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.	More clarity in the application process and specificity in the standards of practice will benefit certificate holders, the public, and the persons who receive treatment.

Alternatives to Regulation

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.

Regulations for the certification for persons who are sex offender treatment providers are mandated by the Code of Virginia. Requirements for initial and ongoing competency and the

standards of professional conduct are essential to protect the clients, the sex offenders, and the general public.

Regulatory Flexibility Analysis

Pursuant to § 2.2-4007.1B of the Code of Virginia, 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.

Regulations for certification of sex offender treatment providers are mandated by the Code. There are no alternative methods that accomplish the objectives of the law.

Public Participation

Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below.

As required by § 2.2-4011 of the Code of Virginia, if an objection to the use of the fast-track process is received within the 30-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall: 1) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register and 2) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

If you are objecting to the use of the fast-track process as the means of promulgating this regulation, please clearly indicate your objection in your comment. Please also indicate the nature of, and reason for, your objection to using this process.

The Board of Psychology is providing opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal and any alternative approaches, (ii) the potential impacts of the regulation, and (iii) the agency's regulatory flexibility analysis stated in this background document.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: <https://townhall.virginia.gov>. Comments may also be submitted by mail, email or fax to Elaine Yeatts, Agency Regulatory Coordinator at 9960 Mayland Drive, Suite 300, Henrico, VA 23233; fax (804) 527-4434; phone (804) 367-4688. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

Detail of Changes

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. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Use all tables that apply, but delete inapplicable tables.

Table 1: Changes to Existing VAC Chapter(s)

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
30-10		Sets out definitions for words and terms used in the chapter	<p>The definition for “ancillary services” is amended to use more appropriate and current terminology.</p> <p>A new definition is added for “face-to-face” to clarify the meaning is in-person or real-time inactive encounters.</p> <p>The definition for “supervisor” is amended to delete the last sentence which is a requirement for who can serve as a supervisor. The requirement is repeated in subsection C of section 50.</p> <p>A new definition is added for “supervisory contract” for clarification of the term used in subsection A of section 50.</p> <p>The term “treatment” is amended to more accurately define the purpose in the context of sex offender treatment.</p>
	30-25	Sets out the requirements for notification to the board within 60 days if there is a change of name or address	<p>The requirement is currently in subsection C of section 80, which implies that it is only part of the renewal process. It is correctly placed in the General Provisions part of the chapter.</p>
30-30		Establishes the prerequisites for certification	<p>Subsection A is amended to delete the burdensome and unnecessary requirement for three reference letters from licensed health care professionals. <i>Other boards have long since stopped requiring reference letters as they usually do not factual information as a basis for a decision on granting certification.</i></p> <p>In its place, the Board has added requirements for a current report from the National Practitioner Data Bank and for verification of any other mental health or health license.</p> <p><i>The report and verification of licensure are required for every other profession in the behavioral sciences boards and are essential for a determination of whether</i></p>

			<p><i>there may be a cause for denial. They do provide factual information on which a decision can be made. An applicant may still be certified if he/she has had discipline or malpractice claims, but the board will consider those applications on a case-by-case basis.</i></p>
30-40		Sets out the educational requirements for certification	<p>Editorial changes are made to clarify what is meant by “documentation” of clock hours; the providers of educational hours provide certificates of completion which must be provided by the applicant. The word “training” is replaced by “education” because the hours are didactic rather than experiential. The description of hours in “program evaluation, treatment efficacy” is replaced with “treatment effectiveness” and issues related to “relapse prevention” for more accurate and updated terminology.</p>
30-50		Sets out the experience requirements for certification and the requirements for supervision and a supervisor	<p>Subsection A is amended by:</p> <ul style="list-style-type: none"> • Moving language currently found in subsection C to subsection A for more logical placement. • Clarifying the transcript is referencing the degree requirement in section 40. • Granting an allowance for persons with documented work experience in another jurisdiction to be able to accept those hours provided the experience met the requirements for supervision, except that it is not required that the supervisor in the other jurisdiction be certified as a sex offender treatment provider or hold a Virginia license. <p>Subsection B is amended to change the requirement for face-to-face supervision from six hours per month to one hour for every 20 hours of experience. The proportional requirement allows more flexibility for the supervisee and the supervisor.</p> <p>Subsection C is deleted with language now found in subsection A.</p> <p>Subsection D (new C) has editorial amendments to incorporate the requirements for a supervisor currently found in the definition of a supervisor.</p>
30-70		Sets out requirements for supervision of unlicensed persons	<p>The section is amended to clarify that ancillary services being provided by an unlicensed person in any setting must be</p>

			<p>supervised by a certified sex offender treatment provider. <i>The regulation is currently written as a requirement for the unlicensed person, but the Board has no jurisdiction over an unlicensed person, so the requirement must be written as the responsibility of the supervisor.</i></p>
30-80		Sets out the requirements for annual renewal of certification	<p>Subsection B is amended to delete the continuing education provisions, which are found in new section 81. Subsection C is deleted with provisions now found in new section 25.</p>
	30-81	Establishes the requirements for continuing education for renewal of certification	<p>The hourly requirement and the approved providers found in subsections A and B are identical to language taken from section 80, with the exception of one additional provider – the Virginia Sex Offender Treatment Association. Subsection C provides a person is not required to have CE for his/her first renewal after initial certification. Subsections D and E allow for the Board to grant extensions or exemptions. Such provisions are allowed for all other professions for this and other boards but were missing in the current regulations. Subsection F requires maintenance of documentation for three years to allow for possible audits. Without a time limit, a certificate holder would need to keep documentation indefinitely. Subsection G clarifies that CE required by a disciplinary order may not be used to satisfy the renewal requirement for CE.</p>
30-90		Sets out the requirements for reinstatement of an expired license	<p>Currently, subsection B requires a person whose license is lapsed more than one year to provide “evidence satisfactory to the board of current ability to practice.” It is a subjective rule that may be arbitrarily applied. Other boards typically require completion of continuing education equal of the number of hour for the period of lapse, not to exceed the equivalent of four years. In the case of CSOTPs, the maximum would be 24 hours if the certification has been lapsed for four or more years. The requirement for verification that any other license is unencumbered is amended to include a license, certification or registration obtained in Virginia as well as any other jurisdiction. CSOTPs typically hold a license issued</p>

			by another board, so it is important to know if that license has been disciplined.
	30-91	Sets out provisions for reinstatement following disciplinary action	<p>The provisions for reinstatement following discipline is currently found in section 120. Currently, that section provides a three-year waiting period for an application for reinstatement, but that is now specified in the Code so an order of revocation would cite that section of law.</p> <p>Current regulation is section 120 also provides a two-year waiting period for a person whose certificate has been denied renewal. If a certificate holder is denied renewal, it would only be through a disciplinary order. If there is a reason to specify a waiting period, it would be stated in the order. There is no specified waiting period before a person can apply for reinstatement.</p>
30-100		Sets out the standards of practice	This section is repealed and restated in new section 101. All of the provisions of section 100 are included, albeit with revised and updated language.
	30-101	Sets out the standards of practice	<p>In the preface, a statement is added that regardless of the delivery method, including the use of technology, the standard of practice apply.</p> <p>Subsections A, B, and C are basically restatements of provisions in the repealed section 100. Amendments in subsection D expand on the requirement to maintain records securely and provide them in accordance with existing law. Since most providers are employed by or contracted by governmental agencies, the record keeping requirements will not create any additional burden.</p> <p>Subsection E expands on the current prohibitions against dual relationships to clarify how the behavioral health boards interpret such prohibitions.</p> <p>Subsection F is consistent with the statutory requirement to let a client know of her/his right to file a report of misconduct by another mental health practitioner.</p>
30-110		Sets out the grounds for disciplinary action	The grounds for disciplinary action needed clarification and updating for consistency with all other behavioral health professions. The additional grounds (##6-14) are found in other regulations for counseling, social work, and psychology as well as other professions such as medicine and

			nursing. Without consistency in the grounds, it is possible for a licensee to have disciplinary action taken against his license but avoid discipline for this certification as a sex offender treatment provider. Given the risk to the public, such a situation is untenable.
30-120		Sets out provisions for reinstatement following disciplinary action	The section is repealed, and provisions moved to new section 91 under the Part on renewal and reinstatement