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Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Board of Psychology, Department of Health Professions
Virginia Administrative Code (VAC) Chapter citation(s)	18VAC125-20
VAC Chapter title(s)	Regulations Governing the Practice of Psychology
Action title	Implementation of criminal background check for Compact compliance
Date this document prepared	September 19, 2023

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), 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 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 Board of Psychology will amend 18VAC125-20-41 and 18VAC125-20-42 to include a requirement that an applicant submit a criminal history background check to the Board.

Acronyms and Definitions

Define all acronyms or technical definitions used in this form.

PSYPACT = the Psychology Interjurisdictional Compact

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 the ORM procedures, "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the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."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 General Assembly passed legislation during the 2020 Session to implement PSYPACT in Virginia. PSYPACT, by the statutes enacted by the legislature (Va. Code § 54.1-3606.2) and its Compact Rules, orders participating states to require criminal history background checks for applicants. Additionally, in the 2023 Session, the legislature enacted Virginia Code § 54.1-2409.1:1, which orders boards participating in interjurisdictional compacts to require "each applicant" to submit a criminal history background check for licensure.

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 Chapter 24 of Title 54.1 of the Code of Virginia. Virginia Code § 54.1-2400(6) specifically states that the general powers and duties of health regulatory boards shall be "[t]o 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."

Purpose

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, explain any potential issues that may need to be addressed as the regulation is developed.

Interstate compacts have determined that criminal background checks are a necessary component of portable healthcare licensure for protection of the national public. Additionally, remaining compliant and a participating state in PSYPACT expands the behavioral health workforce in Virginia via telehealth. If Virginia did not comply with Compact rules and Virginia Code §§ 54.1-2409.1:1 and 54.1-3606.2, it would be removed from the Compact and citizens of Virginia would lose access to those behavioral health providers practicing in Virginia under a Compact privilege.

Substance

Briefly identify and explain the new substantive provisions that are being considered, the substantive changes to existing sections that are being considered, or both.

The requirement to submit a criminal history background check will be added to 18VAC125-20-41, which provides requirements for licensure by examination, and 18VAC125-20-42, which provides requirements for licensure by endorsement. This change will be similar to that promulgated by the Board of Physical Therapy for compliance with the Physical Therapy Compact in 18VAC112-20-60 2 and 18VAC112-20-65 B 2.

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.

Requirements for licensure are contained in regulation. The only mechanism to amend regulation is by regulatory action. There are no alternatives.

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.

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. In addition, as required by § 2.2-4007.02 of the Code of Virginia, describe any other means that will be used to identify and notify interested parties and seek their input, such as regulatory advisory panels or general notices.

The Board of Psychology is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal, (ii) any alternative approaches, and (iii) the potential impacts of the regulation.

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 Erin Barrett, Agency Regulatory Coordinator, 9960 Mayland Drive, Henrico, VA 23233 or erin.barrett@dhp.virginia.gov or by fax to (804) 915-0382. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

A public hearing will be held following the publication of the proposed stage, and notice of the hearing will be posted on the Virginia Regulatory Town Hall website (<https://townhall.virginia.gov>) and on the Commonwealth Calendar website (<https://commonwealthcalendar.virginia.gov/>). Both oral and written comments may be submitted at that time.