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## Periodic Review and Small Business Impact Review Report of Findings

<b>Agency name</b>	Board of Psychology, Department of Health Professions
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	18VAC125-30
<b>VAC Chapter title(s)</b>	Regulations Governing the Certification of Sex Offender Treatment Providers
<b>Date this document prepared</b>	Periodic review
	11/5/20

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*.

### Acronyms and Definitions

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

N/A

### 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 or 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.*

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.*

**Alternatives to Regulation**

*Describe any viable alternatives for achieving the purpose of the regulation that were considered as part of the periodic review. Include an explanation of why such alternatives were rejected and why this regulation is the least burdensome alternative available for achieving its purpose.*

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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.

**Public Comment**

*Summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency response. Be sure to include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. Indicate if an informal advisory group was formed for purposes of assisting in the periodic review.*

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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.

### Effectiveness

*Pursuant to § 2.2-4017 of the Code of Virginia, indicate whether the regulation meets the criteria set out in Executive Order 14 (as amended, July 16, 2018), including why the regulation is (a) necessary for the protection of public health, safety, and welfare, and (b) is clearly written and easily understandable.*

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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. The Chapter is generally clearly written and understandable, but some sections will be amended for greater clarity.

### Decision

*Explain the basis for the promulgating agency's decision (retain the regulation as is without making changes, amend the regulation, or repeal the regulation).*

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Upon recommendation from the RAP, the Board of Psychology decided to amend the regulation by a fast-track action.

### Small Business Impact

As required by § 2.2-4007.1 E and F of the Code of Virginia, discuss the agency's consideration of:

- 1) The Code of Virginia requires mandatory certification for persons who practice as sex offender treatment providers regardless of whether they hold another license or work in an exempt setting in which no license is required. Therefore, there is a continued need for the regulation;
- (2) There are occasionally questions from applicants about what documentation is needed for certification or from certificate holders about continuing education, so those sections are being

amended for greater clarity. Generally, there have been no complaints and few comments received concerning the regulation;

(3) The regulation is not considered to be complex;

(4) The regulation does not overlap, duplicate, or conflict with federal or state law or regulation; and

(5) The last regulatory review amendments for this chapter became effective on January 15, 2016. Since then, there have been two actions to reduce the renewal fee, and one action to increase the handling fee for dishonored payments for consistency with the fee required in the Code.

In the practice of sex offender treatment, some of the terminology has changed and is updated in the regulation. Additionally, there is a greater utilization of technology in the provision of supervision and in the treatment offender. Accordingly, the definition of “face-to-face” includes the use of real-time interactive contacts in which there is an opportunity for interaction by visual and audio means. Standards of practice are amended to clarify that they are applicable regardless of the means by which treatment is provided.

There are no changes recommended that will create any economic impact on small businesses.

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