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Proposed Regulation Agency Background Document

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	5/21/18

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (preferably no more than 2 or 3 paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

Regulations for registration of peer recovery specialists are being 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

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including: 1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable; and 2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person'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 new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Describe the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is 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.

Proposed regulations replace emergency regulations which became effective on December 18, 2017. 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 proposed regulatory action, 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, please indicate.

- 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 identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include 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 statement to that effect.

There are no applicable federal requirements.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

There are no localities particularly affected.

Public participation

Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulated community.

In addition to any other comments, the Board of Counseling is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the agency/board is seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments may do so via the Regulatory Townhall website, www.townhall.virginia.gov, or by mail to Elaine Yeatts at Department of Health Professions, 9960 Mayland Drive, Suite 300, Richmond, VA 23233 or elaine.yeatts@dhp.virginia.gov or by fax to (804) 527-4434. Comments may also be submitted through the Public Forum feature of the Virginia Regulatory Town Hall web site at: <http://www.townhall.virginia.gov>. Written comments must include the name and address of the commenter. 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 this stage 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.

Economic impact

Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact.

<p>Projected cost to the state to implement and enforce the proposed regulation, including: a) fund source / fund detail; and b) a delineation of one-time versus on-going expenditures</p>	<p>There are no costs for implementation or enforcement; the proposal may actually reduce some of the costs incurred in hiring outside reviewers to go over transcripts and educational qualifications.</p>
<p>Projected cost of the new regulations or changes to existing regulations on localities.</p>	<p>There are no costs to localities.</p>
<p>Description of the individuals, businesses, or other entities likely to be affected by the new regulations or changes to existing regulations.</p>	<p>Persons who want to work as peer recovery specialists and be reimbursed by Medicaid for their services.</p>
<p>Agency’s best estimate of the number of such entities that will be affected. Please 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.</p>	<p>There are 70 persons currently registered as peer recovery specialists. There is no estimate of the number that would be small businesses, but most would be employed by hospitals or other institutions that would not be considered small businesses.</p>
<p>All projected costs of the new regulations or changes to existing regulations for affected individuals, businesses, or other entities. Please be specific and include all costs including: a) the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; and b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.</p>	<p>The requirements of these regulations relate to registration and maintenance of registration. The cost of training and certification should be addressed by regulations promulgated by DBHDS.</p> <p>There is a \$30 fee for registration or renewal of registration. In order to renew registration, eight hours of continuing education is required. There is a wide range of offerings by a long list of providers approved for continuing education, so costs should be minimal. There is no requirement for live, in-person attendance at a CE course.</p>
<p>Beneficial impact the regulation is designed to produce.</p>	<p>Increased accountability and competency for peer recovery specialists being reimbursed by Medicaid for services provided to persons suffering from addiction.</p>

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. 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 regulation.

Legislation establishing a definition of a registered peer recovery specialist and authorizing the registration of this new profession mandated the Board of Counseling: *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.* Therefore, there are no alternatives that can be considered to achieve the essential purpose of the action. Emergency regulation of DBHDS in 12VAC35-250-10 et seq. became effective on May 12, 2017. Regulations promulgated by the Board of Counseling are consistent with the requirements of DBHDS for peer recovery specialists with the exception that there are fewer continuing education hours required under this proposed chapter.

Fees established in this chapter are minimal for a registered profession and are consistent with fees charged to applicants and registrants by other health regulatory boards at DHP. It is unknown whether the fees will generate sufficient revenue to offset the expenses of registration, renewal, and potential investigations and disciplinary proceedings for this profession.

In the development of regulations, the Department of Health Professions worked collaboratively for several months with staff from the Secretary's office, DMAS, and DBHDS. Then on June 26, 2017, the Board of Counseling convened a Regulatory Advisory Panel (RAP) with 18 members representing the three health regulatory boards at DHP, staff from the other agencies, community services boards, private providers of mental health services, and professional associations. Regulations were recommended by the RAP to the Regulatory Committee, which met on July 21, 2017. Following the Comment Period on the NOIRA to replace the emergency regulations, the RAP was reconvened on April 9, 2018 to consider any comment and recommend proposed regulations. Public comment has been received at each of these meetings.

Regulatory flexibility analysis

Pursuant to § 2.2-4007.1B of the Code of Virginia, please 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) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of 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 proposed regulation.

There are no alternative regulatory methods.

Public comment

Please summarize all comments received during the public comment period following the publication of the NOIRA, and provide the agency response.

The comment period on the NOIRA was from 1/8/18 to 2/17/18; there was no public comment.

Family impact

Please assess the impact of this regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse, and one’s children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

There is no impact of this regulatory action on the family. However, the problem of substance abuse is impacting many families; peer recovery specialists working with persons who have substance abuse problems need to be trained and accountable for their practice.

Detail of changes

Please list all changes that are being proposed and the consequences of the proposed changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action. If the proposed regulation is intended to replace an emergency regulation, please follow the instructions in the text following the three chart templates below.

Section number	Proposed requirements	Other regulations and law that apply	Intent and likely impact of proposed requirements
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 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	Sets forth the continued education requirements for renewal to include eight contact hours with a minimum of one hour in ethics Subsection A lists the content areas for continuing competency activities. Subsection B lists the organization, associations, or institutions that are approved to provide continuing education. Subsection C exempts newly registered peers from CE for the first renewal. Subsection D allows the Board to grant an extension for up to one year for good cause shown. Subsection E allows the Board to grant an exemption for circumstances beyond the control of the peer. Subsection F requires maintenance of documentation for three years. Subsection G authorizes an audit of registrants and specifies the documentation required. Subsection H specifies that CE hours required by a disciplinary order may not be counted towards the annual requirement.	§§ 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, 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

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 misrepresentation in an attempt to obtain registration.