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Fast-Track Regulation Agency Background Document

Agency name	Board of Counseling, Department of Health Professions
Virginia Administrative Code (VAC) citation(s)	18VAC115-80
Regulation title(s)	Regulations for registration of Qualified Mental Health Professionals
Action title	Registration of QMHP-trainees
Date this document prepared	12/11/19

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 VAC7-10), 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 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.

The Board has adopted regulations to implement registration of persons who are in training to become a qualified mental health professional-adult (QMHP-A) or qualified mental health professional-child (QMHP-C). Amendments for registration as a trainee specify the same education or licensure requirement required to register as a QMHP-A or QMHP-C.

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.

QMHP-A = qualified mental health professional-adult

QMHP-C = qualified mental health professional-child

Statement of Final Agency Action

Please 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 November 22, 2019, the Board of Counseling amended 18VAC115-80-10 et seq., Regulations for Registration of Qualified Mental Health Professionals.

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."

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

In the 2019 Session of the General Assembly, Chapters 101 and 217 established a definition for "Qualified mental health professional-trainee" and amended the powers and duties of the Board to promulgate regulations for the registration of persons receiving supervised training in order to qualify as a qualified mental health professional.

Current regulations allow for registration as a trainee, but do not specify the requirements for registration. However, the Board has required anyone who sought to register as a trainee to have the education or licensure requirements for registration as a QMHP – less the hours of training. Therefore, the proposed regulations do not differ from current practice and should not be controversial.

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 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 statutory authority for registration of QMHP-trainees is found in Chapter 35 of Title 54.1:

§ [54.1-3500](#). Definitions.

As used in this chapter, unless the context requires a different meaning:

"Qualified mental health professional-trainee" means a person who is receiving supervised training to qualify as a qualified mental health professional and is registered with the Board.

§ [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:

9. To promulgate regulations for the registration of qualified mental health professionals, including qualifications, education, and experience necessary for such registration, and for the registration of persons receiving supervised training in order to qualify as a qualified mental health professional.

Purpose

Please 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.

The purpose of the registration is to address the lack of oversight for persons who are providing mental health services as trainees. By requiring a person who works as a QMHP-trainee to be registered by the Board of Counseling, there is accountability for their services and for the person who provides supervision for a trainee. The purpose is greater protection for the public health and safety and a reduction in the incidents 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.

The Board has adopted regulations to implement registration of persons who are in training to become a qualified mental health professional-adult (QMHP-A) or qualified mental health professional-child (QMHP-C). Amendments for registration as a trainee specify the same education or licensure requirement required to register as a QMHP-A or QMHP-C.

Issues

Please 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 amendment is more assurance of competency and accountability for persons providing mental health services. 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 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 identify any other state agencies, localities, or other entities particularly affected by the regulatory change. "Particularly affected" are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.

Other State Agencies Particularly Affected

The regulation of QMHPs is the result of collaborative efforts by DHP, DBHDS, DMAS, private providers, and other licensing boards to address concerns about the use of unlicensed and unregistered persons in the provision of services to clients and the lack of accountability for those services. The intent of the regulation is to register persons in training to become QMHPs, so there is some accountability for their practice and a listing of qualified persons for the purpose of reimbursement by DMAS.

Localities Particularly Affected - None

Other Entities Particularly Affected - None

Economic Impact

Pursuant to § 2.2-4007.04 of the Code of Virginia, please 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. Please 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 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. DMAS already requires anyone in training as a QMHP to be under supervision and to be registered with the Board of Counseling.</p>
<p><i>For all agencies:</i> Benefits the regulatory change is designed to produce.</p>	<p>More accountability for trainees</p>

Impact on Localities

Projected costs, savings, fees or revenues resulting from the regulatory change.	There are no costs/savings to localities.
Benefits the regulatory change is designed to produce.	There are no benefits.

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.	Persons who are seeking to obtain supervised hours of experience in order to register as a QMHP-A or QMHP-C.
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.	There are already 2193 persons registered as trainees. DMAS requires registration of training and supervision for persons who are no otherwise qualified to provide mental health services. None of the trainees would be small businesses; they are required to be under supervision.
All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Please 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 costs since the educational qualifications are identical to the current requirements.
Benefits the regulatory change is designed to produce.	Greater assurance that persons acquiring training hours are qualified by education or licensure and are under supervision.

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.

There are no less costly alternatives; the Board has specified requirements consistent with current rules.

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) 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.

There are no regulatory methods consistent with health and safety of the public receiving mental health services.

Public Participation

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.

Detail of Changes

Please 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.

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
10		Sets out definitions for words and terms used in the chapter	The definitions are amended to conform to definitions in 54.1-3500 by the 2019 General Assembly
	35	Sets out the requirements for registration as a QMHP-trainee	Subsection A specifies the requirements for an applicant who wants to register for training as a QMHP-A. The qualifications are identical to those for registration as a QMHP-A, except for the hours of supervised experience which a person will acquire as a trainee. Subsection B specifies the requirements for an applicant who wants to register for training as a QMHP-C. Subsection C specifies that an applicant must not have any unresolved disciplinary action and that the Board will consider any prior action on a case-by-case basis. Subsection D notes that a trainee registration expires in five years. The same language is currently found in

			sections 40 and 50 and is moved to the section on trainee registration.
40		Sets out requirements for registration as a QMHP-A	Subsection A is amended by adding the same language found in section 35 about an applicant shall have no unsolved disciplinary action. Subsection C is amended to specify that supervised experience obtained prior to meeting the education requirements of subsection B will not be accepted in an application for registration as a QMHP-A.
50		Sets out requirements for registration as a QMHP-C	Subsection A is amended by adding the same language found in section 35 about an applicant shall have no unsolved disciplinary action. Subsection C is amended to specify that supervised experience obtained prior to meeting the education requirements of subsection B will not be accepted in an application for registration as a QMHP-C.
70		Sets out the requirement for annual renewal	An amendment will clarify the section applicability to QHMP-A and QMHP-C, rather than trainees.
110		Sets out the requirements for late renewal or reinstatement of registration	Amendments will clarify the section applicability to QHMP-A and QMHP-C, rather than trainees.