



Virginia Department of Planning and Budget **Economic Impact Analysis**

18 VAC 125-30 Regulations Governing the Certification of Sex Offender Treatment Providers

Department of Health Professions

Town Hall Action/Stage: 5660/9149

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Summary of the Proposed Amendments to Regulation

The Board of Psychology (Board) proposes to amend 18 VAC 125-30 *Regulations Governing the Certification of Sex Offender Treatment Providers* (regulation) in order to implement a number of changes following a periodic review.¹ The proposed amendments would (i) clarify and update requirements to be consistent with current practice, (ii) remove the requirement for three reference letters and instead require a report from the National Practitioner Data Bank (NPDB) and a verification of any other license held as a health professional, (iii) allow supervised experience obtained in another state to count towards certification requirements, (iv) add allowable exceptions or exemptions to the continued education requirements, and (v) expand the standards of practice and grounds for disciplinary action to be consistent with those found in the regulations for other health professions.

Background

Pursuant to a periodic review, the Board proposes to make a number of changes. The most significant changes are summarized as follows:

- i. Clarify and update requirements and language consistent with current practice: For example, the definition of “ancillary services” is updated by replacing “substance abuse avoidance” with “substance misuse,” and replacing “sex education” with “human sexuality.” Also, the definition of “face-to-face” contact is amended to

¹ See <https://townhall.virginia.gov/l/ViewPReview.cfm?PRid=1900>.

- include interaction between therapy trainees and supervisors via technology. In addition, while the total hours for face-to face supervision would not change (a minimum of 100 hours of face-to-face supervision out of 2,000 hours of experience), the requirement for six hours per month of face-to-face supervision is repealed and replaced with “one hour of face-to-face supervision for every 20 hours of experience.” The Department of Health Professions (DHP) reports that this change would allow greater flexibility for the supervisor and supervisee.
- ii. Remove the requirement for three reference letters to accompany a certification application: Instead, applicants would submit a report from the NPDB and verification of any licenses from another board.² According to DHP, the applicant would request a report from the NPDB which, in turn, would be submitted to DHP along with other required documentation. The NPDB charges healthcare professionals \$4 for each “self-query” of their own report, of which they may choose to receive hard copies by mail.³ DHP reports that most sex offender treatment providers are also licensed as social workers, counselors, or other mental health professionals. Thus, verification of that license also serves as an effective method to ensure the applicant’s professional standing.
 - iii. Acceptance of supervised experience obtained in another state: Section 50 would permit the board to accept supervised experience hours completed in another jurisdiction for individuals with less than five years of documented work experience. New language would prohibit candidates from beginning their supervised experience until after completing the required degree as set forth in 18 VAC 125-30-40. This follows the direction taken by the Board of Social Work in 2020.⁴
 - iv. Add an allowance for exceptions or exemptions for the continuing education (CE) requirement: A new section (81) would set out requirements for CE. While there is no

² The National Practitioner Data Bank is a web-based repository of reports containing information on medical malpractice payments and certain adverse actions related to health care practitioners, providers, and suppliers. See <https://www.npdb.hrsa.gov/topNavigation/aboutUs.jsp>. In Virginia, the Board of Physical Therapy, Board of Dentistry, Board of Medicine, and Board of Social Work also currently use the NPDB.

³ See <https://www.npdb.hrsa.gov/pract/selfQueryBasics.jsp> for detailed instructions on how individual professionals should use the service to obtain reports.

⁴ See <https://townhall.virginia.gov/L/ViewStage.cfm?stageid=9103>.

change to the hourly requirements, the Virginia Sex Offender Treatment Association would be added as an approved CE provider. Other proposed amendments would:

- exempt providers from CE for their first renewal after initial certification;
- grant the Board authority to grant extensions or exemptions at their discretion;⁵
- require maintenance of documentation for three years to allow for possible audits, eliminating the need to keep records indefinitely; and
- clarify that CE required by a disciplinary order may not be used to satisfy the renewal requirement for CE.

- v. Expand the standards of practice and grounds for disciplinary action to be consistent with other boards and professions: Additional grounds would be added in Section 110 for consistency with the regulations of related boards such as counseling, social work, and psychology.⁶ These expanded grounds for action include engaging in intentional or negligent conduct that causes or is likely to cause harm to a client, performing functions outside the areas of competency, performing acts of fraud or deceiving the public, and failing to cooperate with DHP staff in the conduct of an investigation.

Lastly, one of the proposed amendments would prohibit treatment providers from entering into an intimate or romantic relationship with a current or former sex offender client until five years after the cessation of treatment. In contrast, section 100 of the regulation currently prohibits treatment providers from entering into such relationships altogether, regardless of how much time has passed since cessation of treatment. Although the proposed language is intended to align the standards of practice with those adopted by the Board of Social Work and Board of Counseling, which extended the prohibition on entering such relationships from three years to five years, sex offender treatment providers had previously not been allowed to enter such relationships at all. In response to questions from the Department of Planning and Budget as to whether the Board intended for its requirements to be more permissive than before, DHP reported, “We do not believe the standard should be different for

⁵ According to DHP, “Such provisions are allowed for all other professions for this and other boards but were missing in the current regulations.”

⁶ As per pages 11-12 of the Agency Background Document: “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.” See https://townhall.virginia.gov/l/GetFile.cfm?File=31\5660\9149\AgencyStatement_DHP_9149_v1.pdf

this type of practitioner than for other behavioral health professions; most who hold this certification are also licensees as counselors, social workers, etc. There is mitigating language in that subdivision in which the practitioner bears the burden of assuring that there has been no exploitation of the client both during and following treatment.”⁷

Estimated Benefits and Costs

By clarifying the requirements to obtain and maintain certification, the proposed amendments would benefit current and prospective sex offender treatment providers as well as the organizations that employ them. Some providers may incur lower costs to maintain their certification due to the new exemptions and exceptions for CE requirements. Applicants who have completed a portion of their training in another state would benefit by being able to use supervised experience hours acquired elsewhere to meet the certification requirements.

Although applicants would have to pay a \$4 fee to obtain a report from the NPDB, they would benefit from not having to expend the time and effort to obtain three letters of reference from currently licensed professionals. Utilizing a national database promotes greater transparency since applicants cannot select their letter writers and previous disciplinary actions in other states are less likely to be accidentally overlooked. Thus, prospective employers of certified sex offender treatment providers and the public at large would benefit from using the NPDB.

In addition, aligning the grounds for disciplinary action with the regulations that govern other mental health treatment providers would benefit the public by ensuring that a provider facing disciplinary charges under one board is not permitted to continue providing sex offender treatment simply due to discrepancies in the standards of practice.

Businesses and Other Entities Affected

DHP reports that there are currently 437 certified sex offender treatment providers. It is unknown how many of these providers are also licensed social workers, counselors, or other mental health providers. DHP reports that most sex offender treatment providers are employed

⁷ While this protects individuals seeking treatment, it does not address the possibility that sex offenders who have received treatment may wrongfully manipulate their providers into signing off on parole applications or similar actions that would reduce legal penalties and/or enable recidivist behavior.

by government agencies or are contracted by court systems, but some may be in private practice, especially if they are also licensed as other mental health providers.

Small Businesses⁸ Affected

Private practices that are either (i) owned and operated by or (ii) employ certified sex offender treatment providers would be affected by the proposed amendments. Although the number of such businesses is unknown, the proposed amendments do not appear to create any new costs for them.

Localities⁹ Affected¹⁰

The proposed amendments do not introduce new costs for local governments and are unlikely to affect any locality in particular.

Projected Impact on Employment

The proposed amendments are unlikely to affect the employment of certified sex offender treatment providers. The number of certified providers may increase since some of the proposed amendments would make it easier for providers from other states to obtain certification in Virginia and provide greater flexibility for supervisors and supervisees to meet the “face to face” supervised experience requirements.

Effects on the Use and Value of Private Property

The proposed amendments are unlikely to affect the use and value of private property. Real estate development costs are not affected.

Legal Mandates

General: The Department of Planning and Budget has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia (Code) and Executive Order 14 (as amended, July 16, 2018). Code § 2.2-4007.04 requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the report should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

⁸ Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as “a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.”

⁹ “Locality” can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

¹⁰ § 2.2-4007.04 defines “particularly affected” as bearing disproportionate material impact.

Adverse impacts: Pursuant to Code § 2.2-4007.04(D): In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance within the 45-day period.

If the proposed regulatory action may have an adverse effect on small businesses, Code § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to Code § 2.2-4007.1, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.