



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

18 VAC 115-40 Regulations Governing the Certification of Rehabilitation Providers
Department of Health Professions
Town Hall Action/Stage: 5305/8908
April 16, 2020

Summary of the Proposed Amendments to Regulation

The Board of Counseling (Board) seeks to amend 18 VAC 115-40 *Regulations Governing the Certification of Rehabilitation Providers* in order to implement changes resulting from a periodic review undertaken in 2018.¹ The proposed amendments include: (i) updating the requirements for application and reinstatement of the certification, (ii) adding a fee for anyone requesting documentation of their certification from the Board (iii) changing the renewal deadline to June 30, (iv) expanding the list of violations that would constitute grounds for disciplinary action, and (v) other minor changes.

Background

Pursuant to the periodic review, the Board proposes to make a number of amendments, listed below:

1. Adding a new \$25 fee to the fee schedule in 18 VAC 115-40-20, for providing verification of certification. Since licenses and certifications issued by the Board can be verified online free of charge, anyone requesting documentation such as a letter or a stamped copy of the certification would be required to pay \$25 for this service.
2. Amending the eligibility criteria listed in 18VAC115-40-22 to include “The applicant shall have no unresolved disciplinary action against a health, mental health, or rehabilitation-related license, certificate, or registration in Virginia or in another jurisdiction. The board will consider

¹ See <https://townhall.virginia.gov/l/ViewPReview.cfm?PRid=1674>

history of disciplinary action on a case-by-case basis.” This proposed addition is consistent with recent additions made by the Board to regulations governing other categories of regulants, such as qualified mental health professionals.²

3. Making explicit the requirement that applicants provide “documentation of passage of the examination required by 18VAC115-40-28” as part of the application process (18 VAC 115-40-25) and replacing “documentation of the applicant’s national or out-of-state license in good standing...” with “verification that the applicant’s national or out-of-state license or certificate is in good standing ...” to indicate that electronic verification would suffice in lieu of a document.

4. Changing the date of certification expiration to June 30 of each year, instead of January 31. The Board states that this change would make the renewal date consistent across all categories of regulants. Rehabilitation providers, whose certificates are currently due to expire on January 31, 2021, would have until June 30, 2021 to renew it. (18 VAC 115-40-30)

5. Clarifying the requirements for reinstatement of a certificate by including the following examples of the evidence required to demonstrate continued ability to provide services: certificates of completion of continuing education, verification of practice in another jurisdiction, or maintenance of national certification. (18 VAC 115-40-35)

6. Allowing change of name in addition to change of address, and allowing rehabilitation providers to submit the new name and/or address to the Board within 60 days of such change, as opposed to 30. (18 VAC 115-40-38)

7. Expanding the types of violations that would constitute grounds for disciplinary action. Specifically, the Board seeks to add “attempting to procure, or maintaining” to “procuring a license, certificate or registration by fraud ...” and “mental illness” as a means by which providers may compromise the safety of their clients. The proposed amendments would also add performing functions outside of one’s board-certified area of competency, intentional or negligent conduct, failure to cooperate with the Department of Health Professions in an investigation, failure to report evidence of child or elder abuse or neglect, knowingly allowing persons under supervision to jeopardize client safety or practice outside of their area of responsibility, and generally conducting one’s practice in a manner that would be dangerous to

² See <https://townhall.virginia.gov/l/ViewStage.cfm?stageid=8843>

the clients or to the public, including engaging in acts to intentionally defraud or deceive clients or the public. (18 VAC 115-40-50) These additions are consistent with other regulations promulgated by the Board.³

8. Updating the names and current versions of forms associated with this regulation.

Estimated Benefits and Costs

On the whole, the proposed amendments are unlikely to impose a substantive economic burden on regulants, clients, or other entities in the industry. The new verification fee would only affect a small fraction of rehabilitation providers who choose to request such documentation in lieu of online verification, which can be accessed for free. The Board reports having only one or two complaints regarding disciplinary violations in each of the previous two years, and does not anticipate that the new violations being added would lead to a significant increase in complaints. Finally, the proposed change in renewal deadlines would not substantively affect the Board financially; the Board currently has a \$1.2 million balance and thus expects to absorb any short-term costs arising from the initial five-month extension of the renewal deadline. All other changes listed above are unlikely to have any direct economic consequences, and may benefit providers to the extent that they help clarify the requirements.

Businesses and Other Entities Affected

The proposed amendments pertain to rehabilitation providers who are required to have certification and those seeking such certification in Virginia.⁴ There are currently 230 certified rehabilitation providers,⁵ who mainly work in non-profit or clinical settings. No new costs would accrue to them due to the proposed amendments.

³ For examples, see <https://law.lis.virginia.gov/admincode/title18/agency115/chapter30/section150/> or <https://law.lis.virginia.gov/admincode/title18/agency115/chapter80/section100/>

⁴ Not all rehabilitation providers are required to have Board certification. There is an exemption in the law for “employees or independent contractors of the Commonwealth’s agencies and sheltered workshops providing vocational rehabilitation services, under the following circumstances: (i) such employees or independent contractors are not providing vocational rehabilitation services under § 65.2-603 or (ii) such employees are providing vocational rehabilitation services under § 65.2-603 as well as other programs and are certified by the Commission on Rehabilitation Counselor Certification (CRCC) as certified rehabilitation counselors (CRC) or by the Commission on Certification of Work Adjustment and Vocational Evaluation Specialists (CCWAVES) as Certified Vocational Evaluation Specialists (CVE).”

⁵ Data source: Department of Health Professions

Small Businesses⁶ Affected

The proposed amendments do not directly affect any small businesses, nor would they face any new costs as a result of the proposed amendments.

Localities⁷ Affected⁸

The proposed amendments are not expected to disproportionately affect particular localities or introduce new costs for local governments.

Projected Impact on Employment

The proposed amendments are unlikely to affect total employment in the industry.

Effects on the Use and Value of Private Property

The proposed amendments are unlikely to affect the use or value of private property. Real estate development costs are unlikely to be 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.

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

⁶ 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.”

⁷ “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.

⁸ § 2.2-4007.04 defines “particularly affected” as bearing disproportionate material impact.

proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.