



Virginia
Regulatory
Town Hall

Proposed Regulation Agency Background Document

Agency Name:	Board of Psychology/Department of Health Professions
VAC Chapter Number:	18 VAC 125-30-10 et seq.
Regulation Title:	Regulations Governing the Certification of Sex Offender Treatment Providers
Action Title:	Periodic Review
Date:	5/21/01

This information is required pursuant to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99), and the *Virginia Register Form, Style and Procedure Manual*. Please refer to these sources for more information and other materials required to be submitted in the regulatory review package.

Summary

Please provide a brief summary of the proposed new regulation, proposed amendments to an existing regulation, or the regulation proposed to be repealed. There is no need to state each provision or amendment or restate the purpose and intent of the regulation; instead give a summary of the regulatory action and alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

Amendments to regulation are proposed as a result of the Board's review of regulations pursuant to Executive Order 25. Amendments will make the miscellaneous fees consistent with other professions regulated by the Board, provide clarification about supervised experience required prior to certification, and revise reinstatement requirements. The number of clock hours of required training remains at 50, but more of those hours must be in subjects specific to sex offender assessment and treatment interventions.

Basis

Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes

exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority must be provided. Please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law.

Chapter 24 establishes the general powers and duties of health regulatory boards including the responsibility to promulgate regulations, levy fees, administer a licensure and renewal program, and discipline regulated professionals.

§ 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.*
- 4. To establish schedules for renewals of registration, certification and licensure.*
- 5. To levy and collect fees for application processing, examination, registration, certification or licensure and renewal that are sufficient to cover all expenses for the administration and operation of the Department of Health Professions, the Board of Health Professions and the health regulatory boards.*
- 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 and Chapter 25 of this title.*
- 7. To revoke, suspend, restrict, or refuse to issue or renew a registration, certificate or license which such board has authority to issue for causes enumerated in applicable law and regulations.*
- 8. To appoint designees from their membership or immediate staff to coordinate with the Intervention Program Committee and to implement, as is necessary, the provisions of Chapter 25.1 (§ 54.1-2515 et seq.) of this title. Each health regulatory board shall appoint one such designee.*
- 9. To take appropriate disciplinary action for violations of applicable law and regulations.*
- 10. To appoint a special conference committee, composed of not less than two members of a health regulatory board, to act in accordance with § 9-6.14:11 upon receipt of information that a practitioner of the appropriate board may be subject to disciplinary action. The special*

conference committee may (i) exonerate the practitioner; (ii) reinstate the practitioner; (iii) place the practitioner on probation with such terms as it may deem appropriate; (iv) reprimand the practitioner; (v) modify a previous order; and (vi) impose a monetary penalty pursuant to § 54.1-2401. The order of the special conference committee shall become final thirty days after service of the order unless a written request to the board for a hearing is received within such time. If service of the decision to a party is accomplished by mail, three days shall be added to the thirty-day period. Upon receiving a timely written request for a hearing, the board or a panel of the board shall then proceed with a hearing as provided in § 9-6.14:12, and the action of the committee shall be vacated. This subdivision shall not be construed to affect the authority or procedures of the Boards of Medicine and Nursing pursuant to §§ 54.1-2919 and 54.1-3010.

- 11. To convene, at their discretion, a panel consisting of at least five board members or, if a quorum of the board is less than five members, consisting of a quorum of the members to conduct formal proceedings pursuant to § 9-6.14:12, decide the case, and issue a final agency case decision. Any decision rendered by majority vote of such panel shall have the same effect as if made by the full board and shall be subject to court review in accordance with the Administrative Process Act. No member who participates in an informal proceeding conducted in accordance with § 9-6.14:11 shall serve on a panel conducting formal proceedings pursuant to § 9-6.14:12 to consider the same matter.*
- 12. To issue inactive licenses and certificates and promulgate regulations to carry out such purpose. Such regulations shall include, but not be limited to, the qualifications, renewal fees, and conditions for reactivation of such licenses or certificates.*

§ 54.1-3605 mandates that the Board promulgate regulations for the voluntary certification of individuals who are exempt from certification under §54.1-3610 and for the mandatory certification of individuals who are not otherwise licensed.

§ 54.1-3605. Specific 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. In promulgating such regulations, the Board shall consider the standards recommended by the Advisory Committee on Certified Practices pursuant to 54.1-3610.*
- 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.

The Office of the Attorney General has certified by letter that the Board has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law.

Purpose

Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the proposed regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.

The Board of Psychology is charged with issuing certificates and regulating the practice of sex offender treatment providers. As the regulating agency, the Board has the duty to protect the public by establishing qualifications and requirements for certification which are necessary to ensure the competence and integrity of certificate holders and by taking disciplinary action for violations to applicable law and regulations. Regulations are the mechanism by which the Board sets forth qualifications and requirements for certification, and standards of professional conduct which provide the basis for disciplinary action. The Board considers the problems the regulations are intended to address, and utilizes professional expertise, review of requirements of other states and national associations, historical information and public comment to determine minimal requirements that will ensure competency of its licensees and protect the public health, safety and welfare.

Although the Board has determined that the regulations are generally clear and easily understandable, it has identified several areas where unnecessary or outdated language needs to be rescinded, and several areas where new language is needed for clarification or improved consistency with its other regulations.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement providing detail of the regulatory action's changes.

The Board is recommending amendments to its regulations for the certification of sex offender treatment providers in order to update and clarify the regulations. The requirement of 50 clock hours of training would be redistributed among the five subject areas in recognition of the fact that some subjects are more essential and courses more available than others. Amendments to fees are recommended for consistency with the Department's *Principles for Fee Development*,

which have already been applied and are in effect for other professions regulated under the Board.

The Board has proposed to remove all references to the outdated waiver of the supervision requirement and to include language to specify that no supervision will be accepted without prior registration of the supervision contract. However, the Board will propose accepting verification of experience completed during the effective period of prior regulations, provided it met those regulations.

Issues

Please provide a statement identifying the issues associated with the proposed regulatory action. The term "issues" means: 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 include a sentence to that effect.

1) The primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions:

Since the public often relies on the professional judgment of a sex offender treatment provider to evaluate the ability of an offender to live and function safely in the community, the redistribution of required coursework to provide a greater emphasis on sex offender assessment and treatment interventions will be advantageous to the public. There are no disadvantages to the public or to individual businesses, which are not affected by these regulations.

2) The primary advantages and disadvantages to the agency or the Commonwealth:

There are no discernable advantages or disadvantages to the agency or the Commonwealth. The fee structure set in regulation is intended to ensure that costs related to specific activities are borne by the applicants or certificate holders. Agencies of the Commonwealth that offer sex offender assessment and treatment may benefit from certified providers who have more specific training for their job.

Fiscal Impact

Please identify the anticipated fiscal impacts and at a minimum include: (a) the projected cost to the state to implement and enforce the proposed regulation, including (i) fund source / fund detail, (ii) budget activity with a cross-reference to program and subprogram, and (iii) a delineation of one-time versus on-going expenditures; (b) the projected cost of the regulation on localities; (c) a description of the individuals, businesses or other entities that are likely to be affected by the regulation; (d) the agency's best estimate of the number of such entities that will be affected; and e) the projected cost of the regulation for affected individuals, businesses, or other entities.

Projected cost to the state to implement and enforce:

(i) Fund source: As a special fund agency, the Board must generate sufficient revenue to cover its expenditures from non-general funds, specifically the renewal and application fees it charges to practitioners or entities for necessary functions of regulation.

(ii) Budget activity by program or subprogram: There is no change required in the budget of the Commonwealth as a result of this program.

(iii) One-time versus ongoing expenditures: The agency will incur some one-time costs (less than \$1,000) for mailings to the Public Participation Guidelines mailing lists, conducting a public hearing, and sending copies of final regulations to regulated entities. Every effort will be made to incorporate those into anticipated mailings and Board meetings already scheduled.

Projected cost on localities:

There are no projected costs to localities.

Description of entities that are likely to be affected by regulation:

The entities that are likely to be affected by these regulations would be sex offender treatment providers certified by the Board of Psychology.

Estimate of number of entities to be affected:

Currently, there are approximately 317 persons certified in the Commonwealth as sex offender treatment providers; that number is actually down from the 330 reported in June, 2000.

Projected costs to the affected entities:

There will be some cost for compliance for a small number of certificate holders or applicants. Those who may have to add or change supervisor will be pay a \$25 fee for filing that with the Board, rather than the \$50 registration fee currently charged for an addition or a change. To reinstate an expired license will require a fee of \$125, which includes the renewal, the late fee and a reinstatement application fee. To reinstate a license following revocation or suspension, a person would have to pay \$500 to cover all the administrative costs of holding the reinstatement hearing. Other miscellaneous fees are set consistent with fees for the same activity in other boards.

There should be no additional costs associated with completion of course work in sex offender treatment since the total number of required hours is not being increased.

Detail of Changes

Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This

statement should provide a section-by-section description - or cross-walk - of changes implemented by the proposed regulatory action. Where applicable, include citations to the specific sections of an existing regulation being amended and explain the consequences of the proposed changes.

18 VAC 125-30-10. Definitions.

An amendment to the definition of "supervisor" is recommended to change the name of the Board of Counseling as it is now in statute. References to that board in other sections of the regulations will also be amended.

18 VAC 125-30-20. Fees.

Amendments are proposed to provide fees that are consistent with the "Principles for Fee Development" approved for all regulations within the Department. Fees for adding or changing registration of a supervisor, for late renewal, and for reinstatement following revocation or suspension will be added for consistency with other professions regulated under the Board.

The Board would like to propose that fees which are generic to all professions such as a duplicate certificate, verifying a certificate to another jurisdiction and for returned checks be changed to conform with the fees of other boards. This will lower the duplicate certificate fee from \$10 to \$5 and increase the returned check fee from \$15 to \$25. The Board would also like to establish a new fee of \$500 for reinstatement of a certificate that has been revoked or suspended following disciplinary action. This is the same fee established for licensed psychologists and for all categories of regulants under the Board. It is based on the cost of the review of the background investigation and reinstatement application, and the cost of holding an informal conference to consider the reinstatement.

No change is proposed for the renewal fee, application fee, or registration of supervision fee, which are currently in line with the agency's *Principles* to establish this fee based the administrative cost of reviewing the application. For clarification, the Board will propose changing the name of the application fee to "Application Processing and Initial Certification."

The Board would like to establish a reduced fee for registrations of additional supervisors, as it has done in its other regulations. Since the education component would already have been reviewed for the first registration, this fee would be half of the initial \$50 registration fee.

One of the goals of the agency's *Principles for Fee Development* was to provide a basis for standardizing the late renewal and reinstatement processes for all categories of licensure and certification, which vary widely among boards. In April 2000, the Board amended its processes for psychologist late renewal to provide for a penalty fee within one renewal period and a reinstatement process for licenses which have lapsed more than one renewal period. Currently, sex offender treatment providers must pay cumulative renewal and reinstatement fees for each year the certificate has lapsed. The Board would like to amend this process to make it conform with the process established for psychologists in accordance with the *Principles for Fee Development*. This would establish a late penalty of 35% of the renewal fee (\$25) for licenses lapsed less than one year, and a reinstatement fee of \$125 (\$50 review of reinstatement application plus ½ of the annual renewal fee plus the \$25 penalty for late renewal).

18 VAC 125-30-30. Prerequisites to certification.

Amendments recommended include: a) deletion of subsection A, as unnecessary language; and b) addition of the word "licensed" in subsection B3 c, to require "reference letters from three licensed health care professionals."

18 VAC 125-30-40. Educational requirements.

Amendments are recommended to redistribute the 50 clock hours of training acceptable to the Board from 10 hours in each area to a variable number, depending on the essential nature of the subject and the availability of the courses. Training in sex offender assessment and sex offender treatment interventions would require 15 hours in each area; in etiology/developmental issues of sex offense behavior, 10 hours would be required; and in criminal justice and legal issues and program evaluation, treatment efficacy and issues related to recidivism, 5 hours in each area would be required. The total of 50 hours would not be changed. Also, the Board recommends clarification that recidivism refers to sex offenders.

18 VAC 125-30-60. Supervision requirement.

The recommendation is to combine this section with section 50, which states the experience requirements, including supervision. The current regulation applies to anyone getting their supervised experience after August 6, 1998, so that phrase may be eliminated. In subsection C, an amendment is suggested to clarify that supervised experience obtained in Virginia without prior written board approval will not be accepted for certification. (A similar requirement already exists for other persons licensed by the Board.)

18 VAC 125-30-80. Annual renewal of certificate.

A requirement should be added for consistency with other regulated professionals requiring them to notify the board within 60 days of a change of address.

18 VAC 125-30-90. Reinstatement.

The requirements for reinstatement of a lapsed license need to be amended to require reinstatement after a certificate has been lapsed for one year and to add a requirement for verification of licensure or certification in any other jurisdiction subsequent to initial certification by the Board. The changes are recommended for consistency with the Principles for Fee Development and with other regulations under this board.

Alternatives

Please describe the specific 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.

The primary issues the Board addressed during its review involved the education and experience requirements. The Board had concerns that the ten clock-hour requirement in each of the five areas of specialized training set forth under 18 VAC 125-30-40 might not be a sufficient number of hours in the more critical areas of sex offender assessment and sex offender treatment

interventions. The Board considered increasing the number of required hours, particularly in these areas, which would increase the total clock hours of training beyond the 50 hours in the current regulations. This alternative was rejected in favor of changing the hours in each area to place greater emphasis on the more critical subject areas, and less on the other areas, which will not increase the total hours required.

The Board also considered whether the regulations should specify that the 50 clock hours of training must be completed prior to beginning the supervised experience. The Board members acknowledged that exposure to a training area in practice under supervision might help a trainee process the didactic training better through recognition of the subject. The Board opted to leave this matter to the discretion of the licensed supervisor, who is best able to assess the abilities of the individual trainee.

The Board addressed the registration of supervision requirement which has been an area of confusion for many applicants. The current regulations, which are the initial regulations establishing the certification, have a one-year waiver of the supervision requirement which ended August 6, 1998. The Board will recommend removing all references to this waiver, which is no longer in effect. The Board considered including language to specify that no supervision will be accepted without prior registration of the supervision contract. As alternatives, the Board considered waiving the registration requirement for individuals who are combining their training with another residency for a mental health license which has been registered with the appropriate Board, but concluded that it was still necessary for individuals to register the supervision of experience gained in specific sex offender assessment and treatment..

The Board considered removing the reference letter requirement, since the letters always reflect positively on the applicants and have little bearing on the acceptance of the application. The Board decided to retain the requirement, which provides additional verification of competency for individuals who are working with a dangerous population of offenders, and who may testify in court regarding the potential for recidivism. The Board also discussed whether reference letters should be accepted from the supervisor, which may be seen as a duplication of the evaluation submitted at the completion of the supervised experience. The Board opted to continue to accept reference letters from supervisors, but require that all three letters come from licensed health professionals.

The Board also considered whether continuing education should be recommended for this certification, as is being developed for its psychology licensees. The Board rejected this alternative at this time with the expectation that the structured settings which employ certified sex offender treatment providers provide continuing education and training for their staff.

The amended regulation did not change fees for application processing, registration of residency or renewal of certification, but did change other fees to bring the fees into compliance with the fees charged to other regulants of the Board and with the *Principles for Fee Development*, adopted by the Department in 1999.

Public Comment

Please summarize all public comment received during the NOIRA comment period and provide the agency response.

An announcement of the board's intent to amend its regulations was posted on the Virginia Regulatory Townhall, sent to the Registrar of Regulations, and sent to persons on the PPG mailing list for the board. Public comment was received until February 14, 2001. During the 30-day comment period, no comments were received from members of the public.

Clarity of the Regulation

Please provide a statement indicating that the agency, through examination of the regulation and relevant public comments, has determined that the regulation is clearly written and easily understandable by the individuals and entities affected.

The proposed regulations were developed with the advice and recommendations from an ad hoc group of certified sex offender treatment providers who are very familiar with the unique requirements for assessing and treating this population. The Assistant Attorney General who provides counsel to the Board has been involved during the development and adoption of proposed regulations to ensure clarity and compliance with law and regulation.

Periodic Review

Please supply a schedule setting forth when the agency will initiate a review and re-evaluation to determine if the regulation should be continued, amended, or terminated. The specific and measurable regulatory goals should be outlined with this schedule. The review shall take place no later than three years after the proposed regulation is expected to be effective.

Public participation guidelines require the Board to review regulations each biennium or as required by Executive Order. Regulations will be reviewed again during the 2003-04 fiscal year.

Family Impact Statement

Please provide an analysis of the proposed regulatory action that assesses the potential impact on the institution of the family and family stability including the extent to which 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.

In its preliminary analysis of the proposed regulatory action, the agency has determined that there is no potential impact on the institution of the family and family stability and no impact on disposable family income.